

**CRUELTY, COERCION, AND LEGAL
CONTORTIONS: THE TRUMP
ADMINISTRATIONS UNSAFE ASYLUM
COOPERATIVE AGREEMENTS WITH
GUATEMALA, HONDURAS, AND
EL SALVADOR**

A MAJORITY STAFF REPORT

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I. Introduction

Since his first days in office in 2017, President Donald Trump has aggressively exploited the U.S. immigration system to reduce the number of foreigners allowed entry into the United States, and especially to repel refugees, asylum seekers, and other vulnerable migrants in need of protection.¹ From separating migrant children from their parents at the border to decimating the U.S. Refugee Admissions Program to terminating Temporary Protected Status (TPS) for nearly 400,000 individuals at risk of deportation, the president has blocked people fleeing persecution, torture, and other vital threats from protection in the United States and systematically dismantled the institutions that made America a humanitarian leader.² The Trump administration implemented these policies despite record levels of forced displacement globally, with 26 million refugees and 4.2 million asylum seekers having fled persecution and conflict at the end of 2019.³ While these policies have faced legal challenges in U.S. courts, their implementation has trampled on the United States' history as a haven from persecution, betrayed American values, and undermined U.S. global leadership. Our retreat—and the mockery this administration has made of a global protection regime—has made it easier for other countries to shirk their international obligations. The result is a severe weakening of migrant and refugee protections that leaves millions of people more vulnerable and increases instability and the potential for conflict.

One striking example of the effort to eviscerate long-standing American protection policy is the set of agreements the Trump administration signed with El Salvador, Guatemala, and Honduras, the so-called “Asylum Cooperative Agreements” (ACAs). These agreements follow a pattern of unlawful maneuvers designed to close off legal pathways to protection in the United States.⁴ Starting in the spring of 2019, the Trump administration began negotiations with Guatemala, Honduras, and El Salvador on the series of agreements, which stem from a little-known “safe third country” provision of U.S. immigration law. The ACAs serve as mechanisms to repel asylum seekers from the United States and relocate them

¹See Annex 1 for definitions of key terms.

²Michael D. Shear et al., “‘We Need to Take Away Children,’ No Matter How Young, Justice Dept. Officials Said,” *The New York Times*, Oct. 21, 2020; Nick Miroff, “Trump Cuts Refugee Cap to Lowest Level Ever, Depicts Them on Campaign Trail as a Threat and Burden,” *The Washington Post*, Oct. 1, 2020; “Playing Politics with Humanitarian Protections: How Political Aims Trumped U.S. National Security and the Safety of TPS Recipients,” Democratic Staff Report, Senate Committee on Foreign Relations, Nov. 7, 2019.

³“Global Trends: Forced Displacement in 2019,” *United Nations High Commissioner for Refugees (UNHCR)*, June 18, 2020, <https://www.unhcr.org/globaltrends2019/>.

⁴See Annex 2.

in the signatory Central American countries to pursue asylum claims there. Designed not just to export U.S. refugee obligations, but to do so, for example, by sending Hondurans to Guatemala and Guatemalans to Honduras in a cynical game of musical chairs in one of the most violent regions of the world, the ACAs are particularly damaging both to the people seeking asylum and to America's global leadership.

Since their inception, the ACAs with Guatemala, Honduras, and El Salvador have provoked grave concerns within the U.S. government, within the foreign governments negotiating the agreements, and among external experts. Based on these concerns, and in furtherance of its oversight responsibilities, the Senate Foreign Relations Committee (SFRC) Democratic Staff investigated the ACAs.

This report examines the ACAs' impact on the lives of refugees and asylum seekers, their tenuous foundation in U.S. law, and their role in U.S. foreign policy toward Central America. The Report is based on information gleaned through Committee hearings, travel to the region, rigorous oversight of the State Department, and consultations with international organizations and human rights advocates—information learned despite the Trump administration's obstruction and efforts to hide relevant documentation. Annexes to this report include previously unpublished written material provided by the State Department to SFRC Democratic Staff. The report's annexes also include key documents related to the ACAs that the Trump administration refused to disclose to SFRC, ensuring they are now freely accessible to the public. SFRC Democratic Staff has found the ACAs to be alarmingly abusive in every respect. Specifically, SFRC Democratic Staff found that:

- The ACAs appear to violate U.S. law and international obligations by sending asylum seekers and refugees to countries where their lives or freedom would be threatened;
- Determinations by the Attorney General and DHS Acting Secretary that Guatemala provides “full and fair” access to asylum were based on partial truths and ignored State Department concerns;
- The Trump administration radically distorted the intent and meaning of the “safe third country” provision in U.S. law, constructing the ACAs to function as a broad bar to asylum rather than an exception to the right to seek asylum;
- Asylum seekers transferred from the United States to Guatemala under the ACA were subjected to degrading treatment and effectively coerced to return to their home countries of Honduras or El Salvador, where many feared persecution and harm;
- The White House and DHS used coercive tactics to compel the governments of Guatemala, Honduras, and El Salvador to sign the ACAs; and
- The Trump administration has sought to maintain secrecy, obstruct accountability, and hide its actions from Congress and the American public in its pursuit of ACA implementation.

This report reveals that the ACAs effectively punish people attempting to reach safety in the United States by sending them to

highly dangerous countries where access to protection from persecution and violence exists only on paper. **Since implementation of the U.S.-Guatemala ACA began over one year ago, not one of the 945 asylum seekers transferred from the United States to Guatemala has been granted asylum.**⁵ Instead, the vast majority have been left with the grievous options of returning to face serious threats of violence and persecution in their home countries, or risking abuse on another journey northward. Although ACA implementation was suspended due to COVID-19, **these counterproductive and unlawful agreements must never resume and must be terminated as soon as possible.**

⁵United Nations High Commissioner for Refugees Guatemala office meeting with SFRC Democratic Staff, Oct. 21, 2020.

II. Subverting U.S. Asylum Law

The ACAs provide a disturbing example of how the Trump administration has distorted and deliberately disregarded the intent and statutory language of U.S. asylum law. Although the Refugee Act of 1980 codified the right to seek asylum in the United States, the Trump administration has taken the one of the few, limited exceptions to this right and applied it far beyond the meaning of the law.⁶ Citing the “safe third country” provision in Section 208(a)(2)(A) of the Immigration and Nationality Act (INA), the Trump administration created the ACAs with Guatemala, Honduras, and El Salvador as mechanisms to remove asylum seekers from the United States without due process.⁷ Refugees and others in need of protection from torture arriving at the U.S. Southwest border have little chance of remaining in the United States as a result of the ACAs, based on the fraudulent premise that they will have access to protection in Guatemala, Honduras, or El Salvador. The stated purpose of the ACAs is to transfer responsibility to help alleviate “the burdens associated with adjudicating asylum claims.”⁸

This goal of *transferring* responsibility distorts the vision Congress had for *sharing* responsibility for refugee protection when it adopted the safe third country provision in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.⁹ Prior to the law’s enactment, surging numbers of asylum applications prompted some members of Congress to advocate for restrictions on access to asylum in the United States and they considered mandating that asylum seekers be returned to transit countries, such as the United Kingdom, that offered protections similar to the United States.¹⁰ The Immigration and Naturalization Service had proposed a “Discretionary Denial of Asylum” regulation in 1994.¹¹ The outcome of

⁶Immigration and Nationality Act, 8 U.S.C. § 1158(a)(1): “In general, any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien’s status, may apply for asylum in accordance with this section....”

⁷*Id.*

⁸U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, and U.S. Department of Justice, Executive Office of Immigration Review, Implementing Bilateral and Multilateral Asylum Cooperative Agreements under the Immigration and Nationality Act, 84 Fed. Reg. 63995, Nov. 19, 2019.

⁹See Section 604 of Division C of the Omnibus Consolidated Appropriations Act, 1997 (H.R. 3610/P.L. 104-208).

¹⁰Rep. Romano Mazzoli, *H.R. 1153, H.R. 1355, and H.R. 1679, Asylum Reform Act of 1993*, Hearing before the House Judiciary Committee, Subcommittee on International Law, Immigration, and Refugees, Asylum and Inspections Reform, Apr. 27, 1993, at 215.

¹¹U.S. Department of Justice, Immigration and Naturalization Service, Final Rule, *Rules and Procedures for Adjudication of Applications for Asylum or Withholding of Deportation and for Employment Authorization*, 59 Fed. Reg. 62295, Dec. 5, 1994.

the immigration reform debate was that Congress rejected mandated returns, and instead agreed on the discretionary safe third country provision as a compromise.¹² The statute states:

INA Section 208 (a)(2)(A) Safe third country

[The right to apply for asylum in the United States] shall not apply to an alien if the Attorney General determines that the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien's nationality or, in the case of an alien having no nationality, the country of the alien's last habitual residence) in which the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection, unless the Attorney General finds that it is in the public interest for the alien to receive asylum in the United States.

This provision created an exception to the right to seek asylum with three clear requirements. First, there must be a bilateral or multilateral agreement in place. Second, the Attorney General must determine that the country of removal is a place where the individual's life or freedom would not be threatened on account of a protected ground (race, religion, nationality, membership in a particular social group, or political opinion). With this language, the provision upholds a principle of international human rights law known as *non-refoulement*, which protects asylum seekers and refugees from removal not only to their country of origin but to any country where they would face persecution, torture, or other harm.¹³ The provision thus echoes the withholding of removal provision established in the 1980 Refugee Act that implements the *non-refoulement* obligation in the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.¹⁴

Lastly, the safe third country provision requires a determination that the asylum seeker would have access to a "full and fair" asylum procedure or "equivalent temporary protection" in the third country. A recent ruling by the U.S. Court of Appeals for the Ninth

¹²"Eight Days and Counting: Panel Continues Reform Bill Mark-Up, Promises End is Near," 72 No. 41 Interpreter Releases 1447, Oct. 23, 1995, at 3.

¹³See Annex 1.

¹⁴8 U.S.C. § 1231(b)(3)(A) states "the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion." Article 33 of the 1951 Refugee Convention and 1967 Refugee Protocol states: "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

Circuit underscored the principle girding the safe third country provision's requirements by stating: "A critical component of [the safe third country provision] is the requirement that the alien's 'safe option' be genuinely safe."¹⁵

Background: U.S.-Canada Safe Third Country Agreement

Prior to the ACAs, the United States had utilized the safe third country provision only once. The United States signed its first safe third country agreement with Canada in December 2002 after careful consideration of U.S. international legal obligations to protect refugees. The U.S.-Canada Safe Third Country Agreement (STCA) took over *three years* of detailed negotiations to enter into force and included substantial consideration of public comments as it sought to fulfill the statute's requirements.¹⁶ In a hearing of the House Subcommittee on Immigration, Border Security, and Claims on the draft agreement, a State Department witness testified that the U.S. and Canadian asylum systems are "two of the world's most generous and are both fully in keeping with international protection standards," and that, "[p]roperly crafted, safe third country agreements are fully consistent with refugee protection obligations under the 1951 Refugee Convention and the 1967 Protocol," including the prohibition on *refoulement*.¹⁷

The U.S.-Canada STCA applies only to asylum seekers at land ports of entry who have transited or been physically present in the other country or who are in transit during removal from the other country. Notably, it allows access to legal counsel, includes exceptions for family reunification, and invites input from non-governmental organizations (NGOs) and monitoring by the UN Refugee Agency to ensure its consistency with international refugee law.¹⁸ The U.S.-Canada STCA thus stands as an example of faithful interpretation of the safe third country provision enshrined in the INA, even if its execution is now in question in Canada, due to court challenges alleging that the Trump administration's degrading treatment of asylum seekers does not make the United States "safe."¹⁹

¹⁵*East Bay Sanctuary Covenant v. Barr*, 964 F.3d 832, 845–47, 859 (9th Cir. 2020). The Ninth Circuit cited as precedent its 1999 *Andriasian v. INS* decision: The safe-place requirements embedded in the safe third country provision "ensure that if [the United States] denies a refugee asylum, the refugee will not be forced to return to a land where he would once again become a victim of harm or persecution"—an outcome which "would totally undermine the humanitarian policy underlying the regulation." *Id.* at 30.

¹⁶U.S. Department of Justice, Executive Office of Immigration Review, "Asylum Claims Made by Aliens Arriving From Canada at Land Border Ports-of-Entry, 69 Fed. Reg. 69490, Nov. 20, 2004.

¹⁷Statement of J. Kelly Ryan, Deputy Assistant Secretary, Bureau of Population, Refugees, and Migration, U.S. Department of State, *United States and Canada Safe Third Country Agreement*, Hearing before the House Committee on the Judiciary, Subcommittee on Immigration, Border Security and Claims, Oct. 16, 2002.

¹⁸U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, and U.S. Department of Justice, Executive Office of Immigration Review, Implementing Bilateral and Multilateral Asylum Cooperative Agreements under the Immigration and Nationality Act, 84 Fed. Reg. 64002-03, Nov. 19, 2019; see also Government of Canada, "Final Text of Safe Third Country Agreement," *Refworld*, Dec. 5, 2002, <https://www.refworld.org/pdfid/42d7b9944.pdf>.

¹⁹See *Canadian Council for Refugees v. Minister for Immigration and Minister for Public Safety*, 2020 FC 770, Canada Federal Court, July, 22 2020, available at <https://bit.ly/3pJ5d0M>. The Court found the agreement invalid, but suspend the effect of the decision for 6 months.

Asylum Cooperative Agreements

By contrast, the Trump administration hastily crafted separate ACAs with Guatemala, Honduras, and El Salvador—with ***less than two months*** between the start of negotiations and signature for each agreement—and ensured that the agreements provide broad authority to transfer asylum seekers from the United States to the agreed countries. Under these agreements, the United States is responsible for providing asylum screening only to unaccompanied children and individuals arriving with legal status on its territory. Guatemala, Honduras, and El Salvador agreed to receive transfers of any other asylum seekers arriving irregularly at or between U.S. ports of entry, except for their own nationals or stateless habitual residents and convicted criminals.²⁰

The agreements anticipate implementation plans for the transfer process. The implementation plans completed for the Guatemala and Honduras ACAs specify certain nationalities as eligible for transfer and specify the number of transfers and their frequency.²¹ The agreements indicate U.S. support for strengthening the “institutional capacities” of Guatemala, Honduras, and El Salvador, and provide for joint evaluation or review three months after entry into force. Although the preambles to the agreements refer to each country’s obligations under international law to protect refugees and uphold the principle of *non-refoulement*, there is no mechanism to monitor or enforce these obligations. The agreements therefore make it difficult for the United States to ensure that asylum seekers will not be refouled from the country of transfer.²² Additionally, and in further contrast to the U.S.-Canada STCA, there are no provisions allowing access to legal counsel, exceptions for family reunification, or invitations for input and monitoring by international humanitarian organizations.

Distorting the Law’s Meaning and Intent

In creating the ACAs, the Trump administration distorted the intent of the INA’s safe third country provision in at least two important ways. First, although the legislative history makes clear that Congress intended the safe third country provision to *return* asylum seekers in the United States to a country of transit, the Trump administration exploited the lack of specificity in the statute, deliberately crafting the ACAs to allow for the *transfer* of asylum seekers with no connection whatsoever to the agreed country of removal.²³ Although they have not yet been implemented in this way,

²⁰ Agreement Between the Government of the United States of America and the Government of the Republic of Guatemala on Cooperation Regarding the Examination of Protection Claims, 84 Fed. Reg. 64095, Nov. 20, 2019; *see also* Agreement Between the Government of the United States of America and the Government of the Republic of Honduras on Cooperation Regarding the Examination of Protection Claims, 85 Fed. Reg. 25462, May 1, 2020; *see also* “Agreement Between the Government of the United States of America and the Government of the Republic of El Salvador on Cooperation Regarding the Examination of Protection Claims,” <https://bit.ly/3pBBlh5> (last visited on Dec. 17, 2020).

²¹ “Agreement Between the Government of the United States of America and the Government of the Republic of Guatemala on Cooperation Regarding the Examination of Protection Claims, Annex 1: Initial Implementation Plan; Phased Initial Implementation Plan,” Doc. 85, *U.T. v. Barr*, Case no. 1:20-cv-00116-EGS (D.D.C. Mar. 27, 2020).

²² *See, e.g.,* Michelle Foster, *Protection Elsewhere: The Legal Implications of Requiring Refugees to Seek Protection in Another State*, 28 Michigan J. Int’l L. 223, 263–268 (2007).

²³ *See* Rep. Romano Mazzoli, *H.R. 1153, H.R. 1355, and H.R. 1679, Asylum Reform Act of 1993*, Hearing before the House Judiciary Committee, Subcommittee on International Law, Immigration, and Refugees, Asylum and Inspections Reform, Apr. 27, 1993, at 215; U.S. Depart-

the ACAs allow asylum seekers of any nationality to be transferred from any location in the United States to the agreed third country, regardless of whether they transited through that country. Under the ACAs, asylum seekers in the United States could be apprehended at an airport (not just the U.S.-Mexico land border) and forcibly sent to a country they have never transited or visited and where they have no family, friends, or cultural links. For example, the implementation plan for the U.S.-Honduras ACA would allow U.S. authorities to transfer a Brazilian or Mexican asylum seeker to Honduras even if that person never passed through Central America.²⁴

Second, although Congress intended the safe third country provision to be used as a limited exception to the right to seek asylum enshrined in U.S. law, **the Trump administration has employed the ACAs as a broad bar to any asylum screening by U.S. officials.**²⁵ The ACAs deny asylum seekers the opportunity to claim a “credible” fear of persecution or torture that serves as the standards for initial protection screening under U.S. law, and shift responsibility for asylum adjudication onto countries that do not provide full and fair access to asylum. In decisions to remove individual asylum seekers, the ACAs apply the higher standard of being “more likely than not”—proving a probability greater than 50 percent—that the asylum seeker would face persecution or torture in the third country.²⁶ The “more likely than not” would normally only be required at a full hearing before an immigration judge on withholding of removal or a Convention Against Torture claim—notably a higher standard than the “well-founded” fear for asylum claims at a full hearing. For asylum seekers without any meaningful connection to the third country under the ACA or without full information that they will be removed to the third country, it could be exceedingly difficult to prove that their fear meets this higher standard.²⁷

The administration’s approach distorts the discretion to grant asylum codified in the law by turning an exception into a rule that denies any opportunity for asylum in the United States while pur-

ment of Justice, Immigration and Naturalization Service, *Final Rule, Rules and Procedures for Adjudication of Applications for Asylum or Withholding of Deportation and for Employment Authorization*, 59 Fed. Reg. 62295, Dec. 5, 1994; “Eight Days and Counting: Panel Continues Reform Bill Mark-Up, Promises End is Near,” 72 No. 41 Interpreter Releases 1447, Oct. 23, 1995, at 3.

²⁴ Dagoberto Rodriguez, “Honduras recibirá a migrantes de cinco nacionalidades,” *La Prensa*, Jan. 9, 2020.

²⁵ 8 U.S.C. § 1158(a)(2), titled “Exceptions,” lists a series of limited exceptions to the right to seek asylum in the United States as established in 8 U.S.C. § 1158(a)(1).

²⁶ U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, and U.S. Department of Justice, Executive Office of Immigration Review, “Implementing Bilateral and Multilateral Asylum Cooperative Agreements under the Immigration and Nationality Act,” 84 Fed. Reg. 63996, Nov. 19, 2019.

²⁷ In a brief of *amici curiae* submitted in support of the plaintiffs in *U.T. v. Barr*, the National Citizenship and Immigration Services Council 119, representing approximately 700 asylum and refugee officers tasked with implementing the ACAs wrote: “The stringent ‘more likely than not’ standard required by the ACA Rule has traditionally been reserved for use in full-scale removal proceedings administered by immigration judges. And for good reason. In those proceedings, applicants are afforded substantial protections, such as a full hearing, notice of rights, access to counsel, time to prepare, and the rights to administrative and judicial review—protections that are not available under the ACA Rule.” Brief for National Citizenship and Immigration Services Council as Amici Curiae Supporting Plaintiffs, at 4, *U.T. v. Barr*, Case no. 1:20-cv-00116 (D.D.C. 2020).

porting to uphold the law’s prohibition on *refoulement*.²⁸ According to the UN Refugee Agency, “withholding of removal does not provide an adequate substitute for the asylum process . . . and does not fully implement [the 1967 Refugee Protocol] Article 33(1)’s prohibition on *refoulement*.”²⁹ This distortion of the law is so egregious that a union of approximately 700 U.S. Citizenship and Immigration Services (USCIS) asylum and refugee officers filed an *amicus brief* in a court challenge to the ACAs, asserting that these agreements force them “to take actions that violate their oath to uphold the nation’s laws.”³⁰

²⁸ Immigration and Nationality Act, 8 U.S.C. § 1158(b)(1)(A).

²⁹ Brief for United Nations High Commissioner for Refugees as Amici Curiae Supporting Plaintiffs, at 21, *East Bay Sanctuary Covenant v. Barr*, 964 F.3d 832, 845-47 (9th Cir. 2020).

³⁰ Brief for National Citizenship and Immigration Services Council as Amici Curiae Supporting Plaintiffs, *U.T. v. Barr*, at 4, Case no. 1:20-cv-00116 (D.D.C. 2020).

III. Bullying Tactics as Foreign Policy

The White House and DHS pushed through the ACAs with bullying tactics and haste, dismissing serious objections by the State Department, Congress, Guatemalan authorities, civil society, and others. From initial negotiations to entry into force, the United States concluded the Guatemala ACA with unusual speed—less than six months—compared to over three years required to complete the U.S.-Canada Safe Third Country Agreement.³¹ The Honduras ACA entered into force after less than nine months of negotiations on March 25, 2020.³² During this intense period, the ACAs dominated U.S. foreign policy in the region, underscoring President Trump’s singular focus on curbing irregular migration without regard for humanitarian or other foreign policy interests.

Throughout its tenure, the Trump administration has aggressively pushed migrants and asylum seekers back to Central America. It surged U.S. deportations to Guatemala, Honduras, and El Salvador, even deporting dozens of COVID-positive individuals to Guatemala and exacerbating the pandemic’s spread.³³ Under U.S. pressure and with U.S. funding, Mexican National Guard troops forcibly pushed back to Guatemala hundreds of Central American migrants who were part of a caravan headed for the United States in January 2020.³⁴ SFRC Democratic Staff uncovered a reckless and unauthorized DHS operation in January 2020 to transport Honduran migrants in Guatemala back to the border with Honduras.³⁵ In March 2019, President Trump disrupted relations with Guatemala, Honduras, and El Salvador by abruptly cutting off most U.S. foreign aid to the three countries, halting over \$400 million for programs designed to address poverty, violence, and other drivers of migration to the United States.³⁶ The White House’s sus-

³¹ Negotiations on the U.S.-Canada STCA began on December 3, 2001. See Statement of J. Kelly Ryan, Deputy Assistant Secretary, Bureau of Population, Refugees, and Migration, U.S. Department of State, *United States and Canada Safe Third Country Agreement*, Hearing before the House Committee on the Judiciary, Subcommittee on Immigration, Border Security and Claims, Oct. 16, 2002.

³² Agreement Between the Government of the United States of America and the Government of the Republic of Honduras on Cooperation Regarding the Examination of Protection Claims, 85 Fed. Reg. 25462, May 1, 2020.

³³ TRAC database, “Latest Data: Immigration and Customs Enforcement Removals,” queried by citizenship and fiscal year, <https://trac.syr.edu/phptools/immigration/remove/> (last visited Oct. 27, 2020); Press Release, Senator Bob Menendez, “Menendez, Durbin Press Trump Administration on Deportation of Covid-19 Positive Migrants,” May 2, 2020, <https://bit.ly/3z9eVha>.

³⁴ Kevin Sieff, “U.S.-bound Migrants Clash with Mexican Forces at Guatemala Border,” *The Washington Post*, Jan. 20, 2020.

³⁵ “DHS Run Amok? A Reckless Overseas Operation, Violations, and Lies,” Democratic Staff Report, Senate Committee on Foreign Relations, Oct. 13, 2020.

³⁶ “U.S. ending aid to El Salvador, Guatemala, and Honduras over migrants,” *Reuters*, Mar. 30, 2019; see also “U.S. Strategy for Engagement in Central America,” *Congressional Research Service*, June 30, 2020, <https://fas.org/sgp/crs/row/IF10371.pdf>.

pension of foreign aid instantly weakened the Central American governments' negotiating positions.

According to the DHS timeline of ACA negotiations with the Government of Guatemala, a senior U.S. government delegation "with Executive Leadership from DHS and DOS" began negotiations with Guatemalan government officials during a trip to Guatemala on June 12-13, 2019.³⁷ Six weeks later on July 26, while the State Department was still gathering basic information on the country's asylum capacity and designing programs to help strengthen it, DHS' Acting Secretary and Guatemala's Interior Minister signed the ACA in a ceremony at the White House. Guatemala remained woefully unprepared when ACA implementation began less than four months after the agreement was signed, with the first transfer flight arriving on November 21, 2019.³⁸

U.S. negotiations with the government of Guatemala set a precedent that facilitated similarly hasty negotiations with Honduras and El Salvador. Both the Honduras and El Salvador agreements were signed in September 2019 after only two months of negotiations. When SFRC Democratic Staff traveled to the region in October 2019 shortly after the ACAs were signed, officials in El Salvador's office of the Director General of Migration and Immigration said they had not seen the text of the agreement. These two agreements have yet to be implemented.

Internal Government Objections

As negotiations began, on June 12, 2019 the U.S. Embassy in Guatemala City transmitted to Washington a diplomatic cable containing its assessment of the Guatemalan asylum system. Although the assessment approved by the U.S. Ambassador did not expressly object to the Guatemala ACA, it detailed a number of concerns that would preclude the agreement from meeting the law's requirements to uphold the principle of *non-refoulement* and to provide "full and fair" access to asylum. For example, the cable reported concerns that Guatemala "does not provide sufficient safeguards against refoulement," and provided detailed data demonstrating that Guatemala was "among the most dangerous countries in the world."³⁹

Within the State Department, concerns about the agreement with Guatemala grew so serious that some of its lawyers resorted to the rarely used "dissent channel" to ensure their concerns reached the highest levels.⁴⁰ Secretary Pompeo reportedly voiced last-ditch objections to the agreement two hours before the July 26, 2019 Oval Office signing ceremony, telling President Trump the agreement was flawed and a mistake, and arguing the Guatemalan government would not be able to carry out its

³⁷ "Timeline of DHS Engagement with Government of Guatemala re: Asylum Agreement, Asylum Processes and Procedures," Doc. 85, *U.T. v. Barr*, Case no. 1:20-cv-00116-EGS (D.D.C. Mar. 27, 2020).

³⁸ See Annex 4 (Document 2): Responses from Assistant Secretary Kirsten D. Madison and Acting Assistant Secretary Michael G. Kozak, U.S. Department of State, to Questions for the Record Submitted by Ranking Member Bob Menendez, Senate Committee on Foreign Relations, Sept. 25, 2019; see also Geneva Sands, Priscilla Alvarez & Michelle Mendoza, "Trump Administration Begins Deporting Asylum Seekers to Guatemala," *CNN*, Nov. 21, 2020.

³⁹ Annex 3 (Document 3): U.S. Embassy Guatemala, Diplomatic Cable 19 Guatemala 536, "Assessment of the Guatemalan Asylum System," June 12, 2019.

⁴⁰ "Facing the world blindfolded: The dereliction of American diplomacy," *The Economist*, Aug. 13, 2020.

terms. He lost the argument to DHS Acting Secretary Kevin McAleenan, however, who persuaded the President that the agreement would stem the flow of migrants to the United States.⁴¹

In Guatemala, both candidates heading into the nation's presidential run-off election and the Catholic Church explicitly opposed the agreement.⁴² Guatemala's human rights ombudsman, Jordán Rodas, and other prominent Guatemalans petitioned the Constitutional Court to block the agreement, arguing that "Guatemala utterly lacks the institutions able to offer migrants the minimal conditions with respect to human rights."⁴³ Guatemala's Constitutional Court issued an injunction on July 14, 2019, instructing the government not to enter into an ACA without approval from the Guatemalan Congress.⁴⁴

High-Level Coercion

President Trump then intensified his coercive tactics, tweeting on July 23 that Guatemala "has decided to break the deal they had with us on signing a necessary Safe Third [sic] Agreement... Now we are looking at the 'BAN,'... Tariffs, Remittance Fees, or all of the above."⁴⁵ Then-president Jimmy Morales approved the agreement and his Interior Minister Enrique Degenhart signed the ACA on July 26, 2019.⁴⁶ The Guatemalan government released a statement explaining that the agreement was signed "with the objective of preventing serious economic and social repercussions."⁴⁷

The lesson was clear for the leaders of Honduras and El Salvador: sign the ACAs or face bullying directly from the U.S. President. Honduran foreign ministry officials expressed misgivings that their government was bowing to pressure from Washington.⁴⁸ Nevertheless, two months later, the foreign ministers of El Salvador and Honduras each signed ACAs with the United States that are modeled on the Guatemala ACA on September 20, 2019 and September 25, 2019, respectively.⁴⁹

⁴¹ Michael D. Shear & Zolan Kanno-Youngs, "Trump Officials Argued Over Asylum Deal With Guatemala. Now Both Countries Must Make It Work," *The New York Times*, Aug. 2, 2019.

⁴² Matthew Borges, "Guatemala high court blocks agreement to have migrants apply for asylum there rather than in US," *Jurist*, July 16, 2019.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Donald Trump, @realDonaldTrump, "Guatemala, which has been forming Caravans and sending large numbers of people, some with criminal records, to the United States, has decided to break the deal they had with us on signing a necessary Safe Third Agreement. We were ready to go. Now we are looking at the 'BAN,'..." July 23, 2019, <https://bit.ly/3cppxyG>; see also Donald Trump, @realDonaldTrump, "... Tariffs, Remittance Fees, or all of the above. Guatemala has not been good. Big U.S. taxpayer dollars going to them was cut off by me 9 months ago," July 23, 2019, <https://bit.ly/3zbpIRJ>.

⁴⁶ Urias Gamero, "Degenhart: Guatemala dará refugio a salvadoreños y hondureños para frenar viajes a EE. UU.," *Prensa Libre*, Aug. 15, 2019.

⁴⁷ Gobierno Guatemala, @GuatemalaGob, "Guatemala y Estados Unidos suscriben importante acuerdo de cooperaci," July 26, 2019, <https://bit.ly/3fXLdEc>.

⁴⁸ David C. Adams, "Honduras and US close to signing new immigration agreements," *Univision*, Sept. 12, 2019.

⁴⁹ Colleen Long & Astrid Galvan, "US, El Salvador Sign Asylum Deal, Details to be Worked out," *Associated Press*, Sept. 20, 2019; see also U.S. Customs and Border Protection, Fact Sheet: DHS Agreements with Guatemala, Honduras, and El Salvador, Nov. 7, 2019, <https://bit.ly/3v4Wtmp>.

IV. Trump Administration Secrecy and Obstruction

Despite overtly pressuring foreign countries to enter into the agreements and touting them publicly, the Trump administration refused to disclose details of the ACAs to the public and Congress. Without justification, the Trump administration repeatedly refused congressional requests to review the ACAs and associated documents, including legal determinations allowing the agreements' entry into force, implementation plans, and other annexes. Since their inception in mid-2019, Senator Menendez and dozens of other members of Congress have expressed serious concerns about the ACAs and requested relevant documents related to the agreements and their implementation. Senator Menendez and SFRC Democratic Staff have repeatedly requested relevant documents for over a year. The Trump administration's complete refusal to comply with these requests has indicated a concerted effort to maximize secrecy and obstruct any accountability related to implementation of these agreements. Even after many of the primary documents were disclosed through litigation, the Departments of State and Homeland Security continued to refuse requests to provide them directly to Congress.⁵⁰ The Trump administration has continued to refuse to provide primary documents associated with the agreements, including legal determinations allowing the agreements' entry into force, implementation plans, and other annexes. To this day, the administration has refused to even provide a log of such documents so that the public and Congress have clearer knowledge of their existence and the full extent of the legal architecture the administration put into place to subvert the rights of asylum seekers in the United States.

At a SFRC hearing on U.S. Policy in Mexico and Central America in September 2019, in response to a direct request from Senator Menendez, the Acting Assistant Secretary of State for Western Hemisphere Affairs publicly committed to provide copies of "all the migration-related instruments, binding or nonbinding, annexes, appendices, implementation plans, guidance, and other related documents that the administration has signed, agreed to, or otherwise joined" regarding Central America.⁵¹ Following the hearing, Senator Menendez submitted written questions again requesting all relevant ACA documents. The State Department did not respond to these questions until three months later, in late December 2019.

⁵⁰ See Annex 3 for copies of key documents related to the U.S.-Guatemala Asylum Cooperative Agreement.

⁵¹ *U.S. Policy in Mexico and Central America: Ensuring Effective Policies to Address the Crisis at the Border*, Hearing before the Senate Committee on Foreign Relations, Sept. 25, 2019.

The Department's responses were largely inadequate—failing to comply with the request for documents and revealing a disturbing lack of knowledge about the asylum systems of Guatemala, Honduras, and El Salvador. For example, in responses submitted long after all three ACAs had been signed and a month **after implementation had begun in Guatemala, the State Department admitted it was still “seeking specific information” about the budgets and staffing of each government agency responsible for processing asylum claims and could not “yet provide an accurate estimation of Guatemala’s asylum processing capacity.”**⁵² The State Department's responses were so inadequate that SFRC Democratic Staff took the highly unusual step of returning the questions to the State Department twice—in January 2020 and again in February 2020, offering second and third opportunities to provide substantive information. The official responses from the Trump administration are included in the annex of this report and have not previously been made available for public review.⁵³

With growing concern after implementation of the Guatemala ACA began, Senator Menendez and 20 other Democratic senators wrote to the leadership of the Departments of State and Homeland Security in early February 2020 to request information and documents related to the ACAs.⁵⁴ The State Department failed to respond to this request at all, and DHS predictably did not produce the requested documentation in its deficient response. After Senator Menendez sent two more letters requesting documents pursuant to the ACAs—to the Assistant Secretary of State for Legislative Affairs in April 2020 and to Secretary Pompeo in May 2020—the State Department still refused.⁵⁵ In sum, the State Department and DHS have refused five formal requests by Senator Menendez for documents related to the ACAs, as well as dozens of follow up requests from SFRC Democratic Staff.

Only in February 2020 did the State Department provide SFRC Democratic Staff with limited substantive information about the ACAs in writing. This information raised new concerns about the agreements. For example, the State Department wrote in February 2020—nearly 6 months after the ACA was signed—that: “The Embassy asked but was unable to obtain a[n asylum] capacity estimate from the government [of El Salvador].”⁵⁶ The fact that the administration refused to be transparent with Congress has only further fueled distrust in the ACAs’ consistency with U.S. laws and foreign policy interests.

⁵² See Annex 4 (Document 2): Responses from Assistant Secretary Kirsten D. Madison and Acting Assistant Secretary Michael G. Kozak, U.S. Department of State (Dec. 23, 2019), to Questions for the Record Submitted by Ranking Member Bob Menendez, Senate Committee on Foreign Relations, Sept. 25, 2019.

⁵³ See Annex 4.

⁵⁴ See Annex 5 (Document 1): Letter from Senators Menendez, Warren, et al. to Secretary of State Michael Pompeo, Attorney General William Barr, and Acting Secretary of Homeland Security Chad Wolf, Feb. 5, 2020.

⁵⁵ See Annex 5 (Document 3): Letter from Senator Menendez to Assistant Secretary of State for Legislative Affairs Mary E. Taylor, Apr. 27, 2020; (Document 4): Letter from Senator Menendez to Secretary of State Michael Pompeo, May 27, 2020.

⁵⁶ Annex 4 (Document 3): Responses from Assistant Secretary Kirsten D. Madison and Acting Assistant Secretary Michael G. Kozak, U.S. Department of State (Feb. 14, 2020), to Questions for the Record Submitted by Ranking Member Bob Menendez, Senate Committee on Foreign Relations, Sept. 25, 2019.

V. Protection Conditions in Central America's Northern Triangle

There is broad acknowledgement, even within the Trump administration, that Guatemala, Honduras, and El Salvador lack institutional capacity to provide protection to asylum seekers transferred under the ACAs. Although these governments have indicated a willingness to do so, their leaders readily admit that their capacity to protect refugees and asylum seekers is seriously deficient. **Since ACA implementation began one year ago, Guatemala's lack of capacity is confirmed by the numbers: of the 945 asylum seekers whom the United States transferred to Guatemala, not one has been granted asylum.**⁵⁷

Guatemala, Honduras, and El Salvador each joined the *Marco Integral Regional para la Protección y Soluciones* (MIRPS, the Comprehensive Regional Protection and Solutions Framework), a regional, state-led initiative supported through the UN High Commissioner for Refugees and Organization of American States that aims to implement the Global Compact on Refugees adopted in 2017.⁵⁸ However, their asylum laws and procedures remain nascent while their people suffer high levels of violence, human rights abuses, and displacement. As Guatemala's then president-elect, Alejandro Giammattei said in August 2019, just after the outgoing government signed the ACA, "I do not think Guatemala fulfills the requirements to be a third safe country. That definition doesn't fit us. If we do not have the capacity for our own people, just imagine other people."⁵⁹ Honduras' autonomous National Human Rights Commissioner asserted that Honduras lacks the capacity and resources necessary to provide "dignified treatment" to individuals transferred under the ACA.⁶⁰ In response to the question of whether El Salvador was ready to receive asylum seekers through the ACA, President Bukele said in December 2019, "[w]ell, not right now. We don't have asylum capacities, but we can build them."⁶¹

The State Department acknowledged the need to build these countries' asylum capacities and continued to seek details about their asylum staffing and resources even as DHS began ACA im-

⁵⁷United Nations High Commissioner for Refugees Guatemala meeting with SFRC Democratic Staff, Oct. 21, 2020.

⁵⁸United Nations High Commissioner for Refugees, "About the MIRPS," *Global Compact on Refugees Digital Platform*, Oct. 8, 2020, <https://globalcompactrefugees.org/mirps-en/about-mirps>.

⁵⁹Sonia Pérez D., "President-elect Says Guatemala Can't do Migrant Deal with US," *AP*, Aug. 14, 2019.

⁶⁰"Acuerdo con EEUU debe ser Aprobado por el Congreso: Roberto Herrera Cáceres," *La Prensa* (Honduras), Nov. 12, 2019.

⁶¹Sharon Alfonsi, "Our Whole Economy is in Shatters: El Salvador's President Nayib Bukele on the Problems Facing his Country," *60 Minutes*, Dec. 19, 2019.

plementation.⁶² The State Department's Bureau of Population, Refugees, and Migration poured unprecedented levels of funding into building protection capacity, including asylum capacity, in Guatemala, El Salvador, and Honduras soon after the ACAs were signed.⁶³ DHS Acting Secretary McAleenan announced the State Department's \$47 million contribution to the UN Refugee Agency (UNHCR) and International Organization for Migration (IOM) to help strengthen Guatemala's asylum capacity on September 23, 2019.⁶⁴ In response to a written question from Senator Menendez, the State Department admitted in December 2019—after implementation of the Guatemala ACA had begun—that: “The United States government is actively working with our partners and the Government of Guatemala to better understand its current capacities.”⁶⁵

Nascent Institutional Capacity

U.S. officials were fully aware that the asylum systems in ACA countries ranged from extremely weak to non-existent. In Guatemala, the most advanced of the three countries in terms of asylum capacity, the U.S. Embassy's June 2019 assessment of Guatemala's asylum system noted that the *Comisión Nacional para Refugiados* (CONARE, the National Commission for Refugees) had no dedicated full-time staff, that “asylum is only one of their many portfolios,” and that these staff lacked sufficient training. The assessment stated that some provisions of Guatemala's Migration Code “may not be fully compatible with the principles of *non-refoulement*,” that it “does not clearly state a prohibition on returning individuals who may face torture,” and that “documentation issued to refugees lacks recognition by many public and private institutions.” SFRC Democratic Staff find that these statements presented red flags regarding the ACA's compliance with the safe third country provision in U.S. law. The embassy further assessed that, “[h]istorically, Guatemala has had capacity to process about 100–150 cases per year,” or roughly 8–12 cases per month.⁶⁶ This number is alarmingly below the expected 1,620 individual monthly transfers described in the agreement's initial implementation plan or the 945 asylum-seekers actually transferred to Guatemala since the ACA became operational over one year ago.⁶⁷

After Senator Menendez returned the State Department's incomplete responses to his written questions for revision, in July 2020

⁶² Statement of Michael J. Kozak, Acting Assistant Secretary of State, Bureau of Western Hemisphere Affairs, U.S. Department of State, *U.S. Policy in Mexico and Central America: Ensuring Effective Policies to Address the Crisis at the Border*, hearing before the Senate Committee on Foreign Relations, Sept. 25, 2019.

⁶³ U.S. Department of State, Bureau of Population, Refugees, and Migration, “Fiscal Year 2019 Summary of Major Activities: Year in Review,” June 2020, <https://bit.ly/3cqPaiB>.

⁶⁴ “Acting Secretary McAleenan's Prepared Remarks to the Council of Foreign Relations,” *U.S. Department of Homeland Security*, Sept. 23, 2019, <https://bit.ly/3fVD8Qp>.

⁶⁵ See Annex 4 (Document 2): Responses from Assistant Secretary Kirsten D. Madison and Acting Assistant Secretary Michael G. Kozak, U.S. Department of State (Dec. 23, 2019), to Questions for the Record Submitted by Ranking Member Bob Menendez, Senate Committee on Foreign Relations, Sept. 25, 2019.

⁶⁶ Annex 3 (Document 3): U.S. Embassy Guatemala, Diplomatic Cable 19 Guatemala 536, “Assessment of the Guatemalan Asylum System,” June 12, 2019.

⁶⁷ “Agreement Between the Government of the United States of America and the Government of the Republic of Guatemala on Cooperation Regarding the Examination of Protection Claims, Annex 1: Initial Implementation Plan; Phased Initial Implementation Plan,” Doc. 85, *U.T. v. Barr*, Case no. 1:20-cv-00116 (D.D.C. Mar. 27, 2020).

the State Department submitted evidence to SFRC showing that asylum capacity in Honduras and El Salvador is far weaker than in Guatemala. Neither Honduras nor El Salvador has any full-time staff dedicated to refugee or asylum determinations, according to the State Department. In 2019, Honduras adjudicated only 46 asylum claims and El Salvador adjudicated none.⁶⁸ The State Department's *2019 Country Reports on Human Rights Practices* in Honduras stated: "The government has a nascent system to provide protection to refugees, the effectiveness of which had not been fully proven by year's end."⁶⁹ The State Department's July 2020 responses to SFRC Democratic Staff noted that "UNHCR estimates El Salvador can adjudicate five cases per year with its current personnel and resources."⁷⁰

Grave Dangers on the Ground

Beyond their limited institutional capacity, Guatemala, Honduras, and El Salvador are plagued by such high levels of violence, pervasive corruption, and widespread human rights abuses that they cannot reasonably be expected to provide conditions of safety or adequate protection to refugees and asylum seekers. The U.S. Embassy's asylum system assessment described Guatemala as "among the most dangerous countries in the world," citing a homicide rate approaching 22 per 100,000 inhabitants "driven by narco-trafficking activity, gang-related violence, a heavily-armed population, and police/judicial system unable to hold many criminals accountable."⁷¹ The State Department's *2019 Country Reports on Human Rights Practices* in Guatemala noted that "[v]iolence against women, including sexual and domestic violence, remained widespread and serious," and also identified violence and discrimination against lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals as a major concern.⁷² In August 2020, a transgender asylum seeker in Guatemala was killed after fleeing gender-based violence and persecution by gangs in El Salvador.⁷³ As a result of these dangerous conditions, by the end of 2019 more than half a million Guatemalans had fled their homes, including over 142,000 refugees and asylum seekers and over 200,000 internally displaced persons.⁷⁴

Conditions in Honduras and El Salvador are even more dangerous, with gang violence persisting throughout both countries,

⁶⁸ Annex 4 (Document 3): Responses from Assistant Secretary Kirsten D. Madison and Acting Assistant Secretary Michael G. Kozak, U.S. Department of State (Feb. 14, 2020), to Questions for the Record Submitted by Ranking Member Bob Menendez, Senate Committee on Foreign Relations, Sept. 25, 2019.

⁶⁹ Bureau of Democracy, Human Rights, and Labor, "2019 Country Reports on Human Rights Practices: Honduras," U.S. Department of State, <https://bit.ly/3z4oZlp>.

⁷⁰ Annex 4 (Document 3): Responses from Assistant Secretary Kirsten D. Madison and Acting Assistant Secretary Michael G. Kozak, U.S. Department of State (Feb. 14, 2020), to Questions for the Record Submitted by Ranking Member Bob Menendez, Senate Committee on Foreign Relations, Sept. 25, 2019.

⁷¹ Annex 3 (Document 3): U.S. Embassy Guatemala, Diplomatic Cable 19 Guatemala 536, "Assessment of the Guatemalan Asylum System," June 12, 2019.

⁷² U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, "2019 Country Reports on Human Rights Practices: Guatemala," <https://bit.ly/2RtYSJl>.

⁷³ "Death of transgender asylum seeker in Guatemala highlights increased risks and protection needs for LGBTI community," *United Nations High Commissioner for Refugees (UNHCR)*, Aug. 6, 2020, <https://bit.ly/3z2kC0e>.

⁷⁴ "Global Trends: Forced Displacement in 2019," *United Nations High Commissioner for Refugees (UNHCR)*, June 18, 2020, <https://www.unhcr.org/globaltrends2019/>; see also "GRID 2020: Global Report on Internal Displacement," *Internal Displacement Monitoring Centre*, Apr. 2020.

the highest rates of femicide in the entire Western Hemisphere, and serious violence and threats against LGBTI persons, according to the State Department's *2019 Country Reports on Human Rights Practices*.⁷⁵ Honduras' murder rate increased in 2019 to 41.2 homicides per 100,000 individuals and El Salvador had 36 homicides per 100,000 people.⁷⁶ In El Salvador, according to a 2020 U.S. Department of State Overseas Security Advisory Council (OSAC) report, "[v]iolent, well-armed street gangs...concentrate on street-level drug sales, extortion, arms trafficking, murder for hire, carjacking, and aggravated street crime."⁷⁷ By the end of 2019, violent conditions in Honduras had compelled over 247,000 Hondurans to flee internally and nearly 150,000 Hondurans to flee the country entirely as refugees and asylum seekers. At the same time, over 450,000 Salvadorans were internally displaced by the end of 2019, and nearly 180,000 Salvadorans sought protection abroad as refugees and asylum seekers.⁷⁸ Taken together, the nearly 470,000 refugees and asylum seekers from Guatemala, Honduras, and El Salvador represent a six-fold increase over the past five years.⁷⁹

International Condemnation

In light of these dangerous conditions and weak institutional capacities, international condemnation of the ACAs has been swift and unrelenting. While ACA negotiations were underway on July 23, 2019, the Inter-American Commission on Human Rights (IACHR) expressed concerns about U.S. policies toward Central American migrants, with specific attention to the ACAs, stating:

The acts of violence and human rights violations that the IACHR has monitored...regarding Guatemala show that these countries would not comply with conditions necessary to offer the security guarantees that a safe third country must guarantee. This agreement could increase the conditions of vulnerability for migrants and refugees and could expose them to greater risks than those that led them to move originally.⁸⁰

As soon as the Guatemala ACA was published in the Federal Register, the Office of the UN High Commissioner for Refugees (UNHCR) issued a statement expressing its "serious concerns" and calling the ACA "an approach at variance with international law that could result in the transfer of highly vulnerable individuals to countries where they may face life-threatening dangers." UNHCR

⁷⁵"Latin America, the Caribbean and Spain (19 countries): Femicide or feminicide, most recent data available (In absolute numbers and rates per 100,000 women)," *Gender Equality Observatory for Latin America and the Caribbean*, <https://bit.ly/3z2l4LY>.

⁷⁶Parker Asmann & Eimhin O'Reilly, "InSight Crime's 2019 homicide round-up," *InSight Crime*, Jan. 28, 2020.

⁷⁷"El Salvador 2020 crime & safety report," *U.S. Department of State Overseas Security Advisory Council*, Mar. 31, 2020.

⁷⁸"GRID 2020: Global Report on Internal Displacement," *Internal Displacement Monitoring Centre*, Apr. 2020; see also "Global Trends: Forced Displacement in 2019," *United Nations High Commissioner for Refugees (UNHCR)*, June 18, 2020, <https://www.unhcr.org/globaltrends2019/>.

⁷⁹"UNHCR Global Report 2019: The Americas," *United Nations High Commissioner for Refugees (UNHCR)*, <https://bit.ly/3uZYFvF>.

⁸⁰"IACHR Expresses Deep Concern about the Situation of Migrants and Refugees in the United States, Mexico, and Central America," *Inter-American Commission on Human Rights*, July 23, 2020, <https://bit.ly/2S9xWzy>.

described the asylum systems of Guatemala, Honduras, and El Salvador as “still very nascent.”⁸¹

Non-governmental human rights advocates have condemned the ACAs even more forcefully. Amnesty International called them “‘unsafe third country’ agreements because that is in fact what they are.”⁸² The American Immigration Council said the Guatemala ACA “will place thousands of asylum seekers at risk in a country ill-prepared to process a high volume of applications for protection and with safety problems of its own.”⁸³ Refugees International stated it “sees the ACAs not, as the [Federal Register publication] suggests, an attempt to ‘share the burden’ of protection between countries, but as an effort by the United States to shift the responsibility of protection to those countries less able to bare it.”⁸⁴ Physicians for Human Rights warned that the Guatemala ACA “violates the provisions of U.S. law which prohibit ‘safe third country’ relocation of asylum seekers unless that third country can ensure their protection from persecution and guarantee a full and fair asylum process.”⁸⁵

⁸¹ “Statement on new U.S. asylum policy,” *UNHCR*, Nov. 19, 2019, <https://bit.ly/3zima6H>.

⁸² Charanya Krishnaswami, Advocacy Director for the Americas at Amnesty International USA, Interview with Noah Lanard, *Mother Jones*, Feb. 28, 2020.

⁸³ Royce Murray, “Why a Safe Third Country Agreement with Guatemala is Unsafe and Unworkable,” *Immigration Impact*, July 29, 2019, <https://bit.ly/2S8vbOX>.

⁸⁴ Andrew Davidson & Lauren Alder Reid, “Refugees International Opposes Asylum Cooperative Agreements with Guatemala, El Salvador, and Honduras,” *Refugees International*, Dec. 23, 2019.

⁸⁵ “U.S. government’s new ‘safe third country’ deal with Guatemala puts asylum seekers at grave risk,” *Physicians for Human Rights*, Nov. 20, 2019.

VI. Implementation in Violation of Human Rights

To fulfill the safe third country provision under U.S. law and enable ACA implementation, the Attorney General and DHS Secretary each had to make a determination that transferred migrants would not be *refouled* and that the country of transfer provides “full and fair” access to asylum.⁸⁶ These determinations would ensure that the United States fulfills its obligations under international laws to uphold the principle of *non-refoulement* as well as the right to seek asylum. Given the highly dangerous conditions in Guatemala, Honduras, and El Salvador, and the fact that their asylum systems are nascent at best, Senator Menendez and SFRC Democratic Staff sought to understand how Attorney General William Barr and DHS Acting Secretary McAleenan determined that the law’s requirements had been met. As documents obtained by SFRC Democratic Staff show, both officials signed memoranda attesting, “I find that the Guatemalan refugee protection system satisfies the ‘access to a full and fair procedure’ requirement of INA section 208 (a)(2)(A).”⁸⁷ Although the Honduras ACA took effect on March 25, 2020 and the El Salvador ACA took effect on December 15, 2020, and despite repeated requests by Senator Menendez and SFRC Democratic Staff, the Trump administration has continued to hide the determinations by the Attorney General and DHS Secretary that enabled that agreements’ entry into force.

Determinations Based on Partial Truths

The determinations for the Guatemala ACA relied entirely on laws and procedures that exist only on paper, never grappling with inconvenient facts on the ground demonstrating that Guatemala is largely unsafe for asylum seekers. The Department of Justice memo drafted by Gene Hamilton, counselor to the Attorney General, and the corresponding DHS memo, relied on responses to detailed questionnaire, that the Government of Guatemala produced with coaching by Trump administration officials.⁸⁸ The memos ig-

⁸⁶U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, and U.S. Department of Justice, Executive Office of Immigration Review, Implementing Bilateral and Multilateral Asylum Cooperative Agreements under the Immigration and Nationality Act, 84 Fed. Reg. 63997, Nov. 19, 2019.

⁸⁷Annex 3 (Document 1): Memorandum from the Attorney General re “Whether Guatemala’s Refugee Protection Laws and Procedures Satisfy the “Access to a Full and Fair Procedure” Requirements of Section 208(a)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1158(a)(2)(A),” Nov. 7, 2019, at 2; Annex 3 (Document 2): Memorandum from the Secretary re “Whether Guatemala’s Refugee Protection Laws and Procedures Satisfy the “Access to a Full and Fair Procedure” Requirements of Section 208(a)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1158(a)(2)(A),” Oct. 16, 2019, at 2.

⁸⁸See Annex 3 (Document 1): Memorandum from the Attorney General re “Whether Guatemala’s Refugee Protection Laws and Procedures Satisfy the “Access to a Full and Fair Procedure”

Continued

nored significant concerns about gaps in Guatemalan domestic law, minimal operational capacity, and dangerous country conditions that the U.S. Embassy clearly identified. The memos also failed to consider whether processes outlined in existing laws are routinely implemented. SFRC Democratic Staff's analysis finds that:

- The Attorney General and DHS Acting Secretary's determinations cite Article 46 of Guatemala's Migration Code as fulfilling its *non-refoulement* obligations under the Refugee Convention and Protocol, but fail to consider the gaps identified in U.S. Embassy's assessment related to *non-refoulement* and torture;
- Both determinations cite Article 12 of Guatemala's Migration Code as guaranteeing that all migrants are not to be subject to "any form of violence," yet fail to acknowledge the extreme levels of violence faced by citizens and non-citizens across the country;
- Neither determination considers whether violent gangs committing persecution in Honduras and El Salvador would threaten asylum seekers transferred to Guatemala;
- Neither determination discusses the deadly risks faced by women and LGBTI individuals in Guatemala; and,
- Neither determination considers whether refugee protection would suffer if the volume or speed of transfers far exceeds Guatemala's capacity to process asylum claims and provide reception services, as envisioned in the implementation plan.

Degrading Conditions During Transfer

Within days of DOJ and DHS issuing their determinations, DHS proceeded with implementation despite clear risks to individuals' safety and with little consideration for overwhelming Guatemala's capacity. The initial implementation plan agreed to between the Trump administration and Guatemalan authorities to transfer asylum seekers from the United States to Guatemala limited transfers to adult nationals of Honduras and El Salvador.⁸⁹ Shortly after transfer flights began, however, DHS began sending families with children in apparent violation of the agreed implementation plan. The agreement exempts unaccompanied children and the implementation plan makes exceptions for persons with special needs and certain health conditions.⁹⁰ However, other highly vulnerable asylum seekers, such as LGBTI individuals and survivors of gender-based violence, were transferred under the Guatemala ACA because neither the text of the agreement, the implementation plan,

ture" Requirements of Section 208(a)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1158(a)(2)(A)," Nov. 7, 2019, at 2; *see also* Annex 3 (Document 2): Memorandum from the Secretary re "Whether Guatemala's Refugee Protection Laws and Procedures Satisfy the "Access to a Full and Fair Procedure" Requirements of Section 208(a)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1158(a)(2)(A)," Oct. 16, 2019, at 2; *see also* Agreement Between the Government of the United States of America and the Government of the Republic of Guatemala on Cooperation Regarding the Examination of Protection Claims; Questions Regarding Access to Full and Fair Procedures, Doc. 85, *U.T. v. Barr*, Case no. 1:20-cv-00116 (D.D.C. Mar. 27, 2020).

⁸⁹ "Agreement Between the Government of the United States of America and the Government of the Republic of Guatemala on Cooperation Regarding the Examination of Protection Claims, Annex 1: Initial Implementation Plan; Phased Initial Implementation Plan," Doc. 85, *U.T. v. Barr*, Case no. 1:20-cv-00116 (D.D.C. Mar. 27, 2020).

⁹⁰ Agreement Between the Government of the United States of America and the Government of the Republic of Guatemala Concerning Cooperation Regarding the Examination of Protection Claims, 84 Fed. Reg. 64095, Nov. 20, 2019.

nor the guidance to DHS asylum officers referring individuals for ACA transfers provides such humanitarian exceptions.⁹¹

Additionally, ACA transfers arrive at the same reception center at the airport just outside Guatemala City that receive deportees from the United States, including convicted criminals.⁹² When ACA implementation began in late November 2019, this reception center was still under construction following an infusion of \$1 million from USAID.⁹³

The Trump administration's rush to implement the ACA exposed both U.S. officials' cruel treatment of asylum seekers and Guatemala's lack of institutional capacity and experience in refugee protection. Migrants transferred under the ACA described abusive conditions and degrading treatment while in the custody of U.S. Customs and Border Patrol (CBP), including being denied medical care and children being separated from their parents.⁹⁴ CBP agents grievously misinformed asylum seekers, telling them the United States "wasn't giving asylum anymore," and denied them meaningful access to an attorney.⁹⁵ Of those who received accurate information, many without English language skills or legal counsel misunderstood and believed they would be able to apply for U.S. asylum from Guatemala.⁹⁶ ACA transferees were shackled and transported on the same flights as criminal deportees.⁹⁷

Coercion and Fear in Guatemala

Once in Guatemala, many ACA transferees, including small children, waited hours on the tarmac without adequate food, water, or medical assistance.⁹⁸ At the airport, transferees were required to tell immigration officials whether they intended to apply for asylum in Guatemala, seek assistance from the International Organization for Migration to return to their country of origin, or depart on their own.⁹⁹ After their initial decision, transferees only had 72 hours to change their status. This arbitrary 72-hour deadline, imposed by Guatemalan authorities, forced transferred individuals and families to make major decisions about their future under intense time pressure and without sufficient information. Guate-

⁹¹ U.S. Citizenship and Immigration Services, US-Guatemala Asylum Cooperation Agreement (ACA) Threshold Screening Guidance for Asylum Officers and Asylum Office Staff, Nov. 19, 2019.

⁹² "Agreement Between the Government of the United States of America and the Government of the Republic of Guatemala on Cooperation Regarding the Examination of Protection Claims, Annex 1: Initial Implementation Plan; Phased Initial Implementation Plan," Doc. 85, *U.T. v. Barr*, Case no. 1:20-cv-00116 (D.D.C. Mar. 27, 2020).

⁹³ International Organization for Migration (IOM) Central America Meeting with Senate Foreign Relations Committee Democratic Staff, Oct. 16, 2020.

⁹⁴ Maya Srikrishnan, "Border Report: Complaints Detail Abuses Against Asylum-Seekers in U.S. Custody," *Voices of San Diego*, Feb. 24, 2020, <https://bit.ly/3ir7DzA>.

⁹⁵ Cora Currier, "Redirecting Asylum-Seekers from U.S. to Guatemala was a cruel farce, report finds," *The Intercept*, May 19, 2020.

⁹⁶ Rachel Schmidtke, Yael Schacher, & Ariana Sawyer, "Deportation with a Layover: Failure of protection under the U.S.-Guatemala Asylum Cooperative Agreement," *Refugees International*, May 19, 2020, <https://bit.ly/353gjE0>.

⁹⁷ Nick Miroff, "ICE Air: Shackled deportees, air freshener and cheers. America's one-way trip out," *The Washington Post*, Aug. 10, 2019; see also Reynaldo Leas Jr., "Asylum-Seekers Reaching U.S. Border are Being Flown to Guatemala," *NPR*, Mar. 11, 2020.

⁹⁸ Rachel Schmidtke, Yael Schacher, & Ariana Sawyer, "Deportation with a Layover: Failure of protection under the U.S.-Guatemala Asylum Cooperative Agreement," *Refugees International*, May 19, 2020, <https://bit.ly/3w3peRL>.

⁹⁹ "Agreement Between the Government of the United States of America and the Government of the Republic of Guatemala on Cooperation Regarding the Examination of Protection Claims, Annex 1: Initial Implementation Plan; Phased Initial Implementation Plan," Doc. 85, *U.T. v. Barr*, Case no. 1:20-cv-00116 (D.D.C. Mar. 27, 2020).

malan officials initially refused to allow NGOs to provide information or assist migrants at the reception center.¹⁰⁰ The Guatemalan government provides no money to civil society organizations to care for ACA transferees after their arrival.¹⁰¹

Given the dangerous and intimidating conditions they faced, it is not surprising that very few asylum seekers transferred under the ACA actually applied for asylum in Guatemala. The degrading treatment, arbitrary time pressure, and inadequate information provided both in the United States and in Guatemala, all contributed to a coercive context for asylum seekers' decision-making that was further compounded by fear of the country's high levels of violence, and the psychological traumas of persecution and displacement. Of the 945 asylum seekers transferred to Guatemala under the ACA, only 18 (less than two percent) are actively pursuing asylum claims there, and not one has received a decision.¹⁰² Many transferred asylum seekers said they felt unsafe in Guatemala and that their only option was to return to Honduras or El Salvador where at least they could access support networks while they decide their next move. One Honduran woman transferred under the ACA said: "Guatemala? It's the same as Honduras. The difference is that in Guatemala I don't have relatives."¹⁰³ Another Honduran woman said of the gang members who threatened to kill her and her son: "Guatemala is the first place they would look for me." She went into hiding in Honduras following her ACA transfer to Guatemala.¹⁰⁴

Table 1: ACA Transfers to Guatemala
November 2019–March 2020 ¹⁰⁵

Total ACA Transfers	945	
Indicated protection concerns	108 of 130	83%
ACA Asylum applications	34	3.5%
Abandoned	16	1.6%
Active	18	1.9%
Guatemala ACA asylum decisions	0	0

¹⁰⁵ UNHCR Guatemala meeting with SFRC Democratic Staff, Oct. 21, 2020. The percentages reflected on this table are based on the number of individuals that UNHCR and its partners were able to interview and not on the total number of ACA transfers.

¹⁰⁰ International Organization for Migration (IOM) Central America Meeting with SFRC Democratic Staff, Oct. 16, 2020.

¹⁰¹ Schmidtke, Schacher, & Sawyer, *Deportation with a Layover*, at 30.

¹⁰² UNHCR Guatemala meeting with SFRC Democratic Staff, Oct. 21, 2020.

¹⁰³ Kirk Semple, "Asylum Seekers Say U.S. is Returning Them to the Dangers They Fled," *The New York Times*, Mar. 17, 2020.

¹⁰⁴ *Id.*

Neither the State Department, DHS, or any other component of the U.S. government is responsible for monitoring the safety of asylum seekers transferred to Guatemala under the ACA. Without an ability to follow up, **it is difficult to confirm, but seems highly likely that there are specific cases in which the ACA has violated the prohibition on refoulement in U.S., Guatemalan, and international law.** Civil society groups were able to interview only 130 ACA transferees upon reception in Guatemala, but found that a large proportion (108 out of 130) indicated they had protection concerns.¹⁰⁶ Based on this assessment, a rate of protection concerns of 83 percent and an asylum application rate of less than two percent, it is clear to SFRC Democratic Staff that the vast majority of asylum seekers transferred under the Guatemala ACA did not have “full and fair” access to asylum.

COVID-19 and Displacement Trends

The outbreak of the COVID-19 pandemic resulted in border closures and travel restrictions around the world, including Guatemala’s decision to suspend ACA implementation. Although the Honduras ACA entered into force on March 25, 2020 and the El Salvador ACA entered into force on December 15, 2020, the requisite determinations by the Attorney General and the DHS Acting Secretary of “full and fair” access to asylum in Honduras and El Salvador have not been made available to Congress or the public. The COVID-19 pandemic has delayed the start of ACA transfer flights from the United States to Honduras. Still, international organizations and NGOs have expressed concern that the Honduras ACA’s implementation plan indicates it would apply to nationals of Mexico, Guatemala, El Salvador, Brazil and Nicaragua, noting that two asylum seekers from Nicaragua were brutally murdered in Honduras in 2019.¹⁰⁷ Surging migrant apprehensions at the U.S. southern border, ongoing migrant caravans from Central America, and other data show that anti-immigrant policies have not had the deterrent effect intended by the Trump administration.¹⁰⁸ Evidence of Guatemala ACA transferees re-grouping to journey again towards the United States demonstrates the futility of “burden shifting” policies when asylum seekers are forced to flee persecution, violence, and other grave threats to their lives and freedom at home and throughout the region. Dangerous conditions in Central America, compounded by economic contractions related to COVID-19 and the devastating impact of Hurricanes Eta and Iota, are push factors more powerful than U.S. immigration policy.¹⁰⁹

¹⁰⁶ *Id.*

¹⁰⁷ “Human Rights First Warns Against Implementation of Honduras Asylum Agreement During Pandemic,” *Human Rights First*, Apr. 30, 2020, <https://bit.ly/3g1Yxrp>; see also “Cuerpos de nicaragenses refugiados en Honduras son enviados a su país,” *La Tribuna*, June 29, 2019, <https://bit.ly/3x6JClq>.

¹⁰⁸ Nick Miroff, “Migrant Arrests at the U.S. Border Rose to a 13-month High in September,” *The Washington Post*, Oct. 14, 2020.

¹⁰⁹ Natalie Kitroeff, “Two Hurricanes Devastated Central America. Will the Ruin Spur a Migration Wave?” *The New York Times*, Dec. 4, 2020.

VII. Conclusion, Findings, and Recommendations

During negotiations with the Trump administration, the Government of Guatemala sought to change the name of the agreement from “safe third country agreement” to “Cooperation Agreement for the Assessment of Protection Requests.”¹¹⁰ In agreeing to this request, the Trump administration’s decision to remove the word “safe” from the name of all three agreements was an implicit acknowledgement that Guatemala, Honduras, and El Salvador are not actually *safe* for the transfer of asylum seekers. In this way, the name change suggests that the agreements do not comply with the “safe third country” provision of U.S. law.

As the Trump administration pursued the ACAs, it shrouded the details of the agreements in secrecy and obstructed oversight by members of Congress, attempting to hide its callous abuse of the human rights of vulnerable people. President Trump’s bullying tactics bruised U.S. relations in the region, and resulted in agreements that the governments of Guatemala, Honduras, and El Salvador do not have the capacity to implement. But the most shameful aspects of the ACAs are their grave consequences for refugees and asylum seekers who—under the Guatemala ACA—suffered degrading treatment and were coerced into situations where their lives and freedom remain in danger.

In an era of historic levels of forced displacement in the Western Hemisphere and around the world, the ACAs are especially cruel and counterproductive. They distort U.S. asylum law and accompany a series of pernicious policies to exclude asylum seekers and refugees from protection in the United States. As the director of the American Immigration Lawyers Association, Ruben Reyes said: “The purpose of this administration’s policy with asylum seekers is to put one more finger around the necks of refugees . . . [t]o try and make it so difficult, so onerous, so awful that they just give up.”¹¹¹

The ACAs inflict harm not only on the lives of individuals and families, but on U.S. national interests. Eighteen states and the District of Columbia called the Guatemala ACA “inimical to the interest of the States and the public in ensuring that those in need of protection are not sent into the hands of their persecutors,” and noted “asylees’ significant economic and community contributions.”¹¹² Former White House chief of staff Denis McDonough has

¹¹⁰ Sam Levin, “Trump Says Agreement Reached with Guatemala to Restrict Asylum Seekers,” *The Guardian*, July 26, 2019.

¹¹¹ Megan Janetsky, “Asylum Seekers in Limbo Look to US election With Hope and Fear,” *Al Jazeera*, Nov. 1, 2020.

¹¹² Amicus Curiae Brief of the States of California, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Washington, and the District of Columbia in Support of

Continued

said that “the United States’ historic commitments to refugees, immigration, and asylum are sources of great strength rather than sources of weakness or threat.”¹¹³ When the United States demonstrates leadership in protecting refugees and asylum seekers, other countries often follow suit, taking critical steps toward global cooperation to address instability and resolve conflicts and crises. Simply put, protection of refugees and asylum seekers is in the interest of the American public and U.S. national security.

The Trump administration views the ACAs as a model to be replicated with other countries around the world.¹¹⁴ This is precisely the opposite of what needs to happen. Shifting responsibility for refugee protection onto countries so dangerous their own citizens are fleeing en masse only demonstrates inhumanity and cruelty while exacerbating the dire conditions that fuel the ongoing global forced migration crisis. Especially in an era of unprecedented levels of forced displacement around the world, these harmful policies must end. The United States must terminate the ACAs. Congress must pass legislation to clarify its intent and strengthen accountability for legitimately safe third country agreements. More broadly, U.S. policies must restore our leadership in upholding the right to seek asylum and in protecting refugees at home and around the world. The latter is imperative to truly and sustainably increase responsibility sharing with other countries so that future safe third country agreements might be possible, but more importantly, so that refugees and asylum seekers find protection and displacement crises are resolved.

PRINCIPAL FINDINGS

- **The ACAs appear to violate U.S. law and international obligations by posing serious risks of refoulement. Guatemala, Honduras, and El Salvador are not safe places for refugees and asylum seekers as the law underpinning these agreements requires.** These countries are among the most dangerous countries in the world. High levels of violence, especially gang violence and gender-based violence, pose grave risks for many refugees and migrants. All three countries have “nascent” asylum systems that lack institutional capacity to screen asylum seekers transferred under the ACAs and to uphold their legal obligations to protect refugees from refoulement.
- **Of the 945 asylum seekers transferred to Guatemala under the ACA since November 2019, to date not one has been granted asylum.** The numbers underscore the fact that asylum seekers subject to the ACA lack access to asylum and remain doubly at risk of refoulement to Guatemala as their country of transfer and to their country of origin.
- **Determinations by the Attorney General and DHS Acting Secretary that Guatemala provides “full and fair” ac-**

Plaintiffs’ Motion for Summary Judgment and Permanent Injunction, *U.T. v. Barr*, at 12, Case no.1:20-cv-00116 (D.D.C. 2020).

¹¹³ “Denis McDonough on the Future of Migration,” *Georgetown Journal of International Affairs*, Nov. 30, 2018, <https://bit.ly/3cpLnSP>.

¹¹⁴ Elliot Spagat, “Top Trump Advisor Wants More Nations to Field Asylum Claims,” *Associated Press*, Oct. 24, 2020.

cess to asylum were based on partial truths and ignored critical State Department input and widely held information about the country's general level of violence. They relied on a paper review of the country's Migration Code that failed to consider the U.S. Embassy's assessment of Guatemala's asylum capacity and dangerous conditions, as well as other evidence that Guatemala does not meet the requirements of the safe third country provision in U.S. law.

- **The Trump administration radically distorted and willfully disregarded the intent and statutory language related to safe third country agreements.** Although Congress intended the safe third country provision to return asylum seekers in the United States to a safe country of transit, the Trump administration crafted the ACAs to allow asylum seekers of any nationality to be transferred from any location in the United States to the agreed third country. The ACAs serve not as an exception to the right to seek asylum enshrined in U.S. law, but as a broad bar to any asylum screening by U.S. officials. They deny asylum seekers the opportunity to claim a reasonable fear of persecution, and hold them to the higher standard of being "more likely than not" to face persecution or torture in the country of removal.
- **Asylum seekers transferred to Guatemala under the ACA were subjected to degrading treatment and effectively coerced to return home where many feared persecution and harm.** Although a large proportion of transferees indicated protection concerns, they were not fully informed about their right to seek asylum, lacked legal counsel, and faced arbitrary deadlines and other conditions that precluded "full and fair" access to asylum. DHS did not provide guidance to exempt highly vulnerable asylum seekers from transfer, such as LGBTI individuals and survivors of gender-based violence. Transferring responsibility for asylum processing exacerbates the problem of forced displacement rather than resolving it.
- **The White House and DHS used coercive tactics to hastily conclude the ACAs,** dismissing serious objections by Guatemalan authorities, civil society, the State Department, and others. The State Department took a subordinate role in ACA negotiations. President Trump rejected State Department concerns, and bullied the government of Guatemala into signing the agreement with threats of visa sanctions and tariffs.
- **The Trump administration continues to maintain secrecy and obstruct accountability in its pursuit of ACA implementation.** It has repeatedly refused to provide documents related to the ACAs to Congress for over a year and failed to respond fully to written questions from Senator Menendez and SFRC Democratic Staff.

RECOMMENDATIONS

1. **The Biden administration must immediately terminate the Asylum Cooperative Agreements with Guatemala, Honduras, and El Salvador:** Pending termination, the

United States should immediately suspend all implementation. Any future consideration of countries for negotiation of safe third country agreements (STCAs) should not occur without a set of clear criteria established by the State Department, in consultation with international and non-governmental organizations, as to what is a safe place for the transfer of asylum seekers. STCA negotiations should not begin until such criteria are met.

2. **Congress must ensure it plays a more active role in the enactment and implementation of all future safe third country agreements, either by:**
 - a. Passing legislation requiring the State Department to submit the details of a Safe Third Country Agreement to Congress for review and for Congress to approve or disapprove each agreement; or
 - b. Requiring the Secretary of State to submit to Congress a certification before the transfer of aliens pursuant to a Safe Third Country Agreement begins that such country meets certain requirements prior to the use of relevant appropriations.
3. **Congress must amend INA Section 208(a)(2)(A) to:**
 - a. Ensure that asylum seekers are not transferred to safe third countries that they have not transited or to which they have no meaningful connection;
 - b. Require that the Secretary of DHS, in consultation with the Secretary of State, establish in each future safe third country agreement clear and specific criteria for exceptions based on humanitarian and public interests;
 - c. Require determinations concerning whether a potential safe third country provides “full and fair” access to asylum to be made jointly by Secretary of State, Attorney General, and Secretary of Homeland Security, and that it be informed by input from the United States Ambassador, to the relevant country; and
 - d. Authorize judicial review of executive branch safe third country determinations.
4. **The DHS Inspector General and Office of Civil Rights must investigate and review abusive conditions and degrading treatment of ACA transferees:** Without discrimination, asylum seekers in custody at the U.S. southern border should be treated with dignity and respect for human rights. They should be provided accurate and full information by trained USCIS asylum officers about their right to seek asylum in the United States, and be allowed access to legal counsel and language interpretation. U.S. officers must make special accommodations in their treatment of highly vulnerable asylum seekers such as pregnant women, LGBTI individuals, survivors of gender-based violence, and children.
5. **U.S. foreign policy toward Central America should take a holistic approach to addressing the drivers of forced displacement:** Rather than the Trump administration’s sin-

gular focus on stemming irregular migration, U.S. policies and programs should aim to reduce gang violence and gender-based violence, to combat corruption and strengthen access to justice, and to reduce poverty and protect human rights, particularly for LGBTI individuals and other marginalized populations. The State Department should continue to strengthen asylum systems, responses to internal displacement, resettlement processing, and other protection mechanisms in Central America through support to international organizations and should authorize Migration and Refugee Assistance funding to NGOs working in the region.

6. **The Governments of Guatemala, Honduras, and El Salvador should dedicate resources to strengthen their capacity to protect refugees, asylum seekers, and internally displaced persons:** They should implement national action plans to advance the Comprehensive Regional Protection and Solutions Framework (MIRPS) in coordination with international organizations.

ANNEX 1

Definitions of Key Terms

Refugee: A refugee is “any person who is outside of any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”¹¹⁵ This definition under U.S. law largely mirrors the refugee definition outlined in the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. Having acceded to the Refugee Convention and Protocol, Guatemala, Honduras, and El Salvador agreed to this definition. They also have adopted the broader refugee definition under the 1984 Cartagena Declaration, which includes “persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.”¹¹⁶

Asylum-Seeker: The UN Refugee Agency defines an asylum-seeker as an individual who is seeking international protection and whose request for asylum has not yet been finally decided on.¹¹⁷ Although not every asylum-seeker will ultimately be recognized as a refugee, every refugee was initially an asylum-seeker.

Migrant: The International Organization for Migration defines a migrant as any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (1) the person’s legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) the length of the stay.¹¹⁸

Protection: In the context of international humanitarian action, the Inter-Agency Standing Committee defines protection as “all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant

¹¹⁵ See INA 101(a)(42), 8 U.S.C. § 1101(a)(42).

¹¹⁶ See Article III(3) of the Cartagena Declaration on Refugees, adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, Cartagena de Indias, Colombia, Nov. 22, 1984, <https://bit.ly/3gxV3fl>.

¹¹⁷ UN High Commissioner for Refugees, *The 10-Point Plan in Action, 2016—Glossary*, Dec. 2016, <https://bit.ly/355TtM1>.

¹¹⁸ United Nations, Global Issues, “Migration,” <https://bit.ly/3iqGpZJ> (last visited Dec. 16, 2020).

bodies of law (i.e., international human rights law, international humanitarian law, international refugee law).¹¹⁹ Protection includes measures to stop or prevent violence, abuse, coercion and deprivation of civilians affected by crises as well as efforts to restore safety and dignity to their lives. Governments have primary responsibility for the protection of persons on their territory. Major protection challenges for refugees and asylum seekers often include barriers to asylum, lack of access by humanitarian organizations to those in need of assistance, gender-based violence, family separation, and forcible recruitment into armed groups, among others.

Non-refoulement: A cardinal principle of refugee protection codified in Article 33 of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, *non-refoulement* most commonly refers to the obligation or principle of not returning a refugee to a territory where there is a risk that his or her life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group, or political opinion, although the concept could apply to broader forms of harm as well. Article 3 of the 1984 Convention Against Torture contains a *non-refoulement* obligation with respect to torture. The principle of *non-refoulement* applies not only with respect to the individual's country of origin but to any country where he or she would face persecution. Properly applied, the principle protects those who are seeking international protection even if they have not been formally recognized as a refugee.¹²⁰ Indeed, the threat of refoulement is often a concern where a country lacks effective systems or procedures for determining refugee status or conducts mass deportations. The United States implements its *non-refoulement* obligations through a provision on withholding of removal in INA Section 241(b)(3).

¹¹⁹ Inter-Agency Standing Committee, "Policy: Protection in Humanitarian Action," Oct. 2016, at 2.

¹²⁰ UN High Commissioner for Refugees, *Note on Non-Refoulement (Submitted by the High Commissioner)*, 38th Session, Aug. 23, 1977, <http://www.refworld.org/docid/3ae68ccd10.html>.

ANNEX 2

Legal Challenges to Trump Administration Immigration Policies

The Trump administration has pursued a series of restrictive immigration policies that have faced serious challenges in U.S. courts. While not an exhaustive list, the policies facing legal challenges below indicate a pattern of unlawful maneuvers to close pathways for refugees and asylum seekers in need of protection in the United States.

1. Family Separation at the U.S.-Mexico Border

The lawsuit *Ms. L v. ICE* and a writ for habeas corpus was filed in the U.S. District Court for the Southern District of California on February 26, 2018 by an asylum seeker from the Democratic Republic of Congo who was forcibly separated from her then-six-year old daughter. Represented by the American Civil Liberties Union, the plaintiff sued U.S. Immigration and Customs Enforcement (ICE), the U.S. Department of Homeland Security (DHS), and other government agencies for the forcible separation of over 2,000 asylum-seeking families who arrived at the southern border without documentation. In June 2018, the judge issued a preliminary injunction requiring U.S. immigration authorities to reunite most separated families within 30 days and to reunite children younger than age five within two weeks, however the Trump administration continued to separate families. The case is ongoing in the district court.¹²¹

2. State and Local Consent for U.S. Refugee Admissions Program

On November 21, 2019, HIAS, Inc., Church World Service, Inc., and Lutheran Immigration & Refugee Service, Inc. filed the lawsuit *HIAS, Inc. v. Trump* in the U.S. District Court for the District of Maryland. The plaintiffs, challenged the “Enhancing State and Local Involvement in Refugee Resettlement” Executive Order 13888, alleging that this action by the Trump administration violates the Refugee Act of 1980, the Administrative Procedure Act (APA), and principles of federalism. The plaintiffs argued that Executive Order 13888 makes an unprecedented change to the refugee resettlement process by mandating that refugees not be resettled in the United States unless the state and locality where they

¹²¹ See *Ms. L v. United States Immigration & Customs Enft (“ICE”)*, 415 F. Supp. 3d 980 (S.D. Cal. 2020).

are to be resettled take the affirmative step of providing written consent. On January 15, 2020, Judge Peter J. Messitte granted the plaintiffs' motion for a preliminary injunction and ultimately issued a nationwide injunction enjoining Executive Order 13888. The Fourth Circuit affirmed the nationwide preliminary injunction on January 8, 2021.¹²²

3. Termination of Temporary Protected Status

The lawsuit *NAACP v. DHS* was filed in the U.S. District Court of Maryland on January 24, 2018. Represented by its own counsel, the NAACP challenged DHS' November 2017 termination of Temporary Protected Status (TPS) for Haitians living in the United States. On March 23, 2020, the judge granted the defendants' motion to stay proceedings due to the interconnected nature of parallel litigation and the COVID-19 pandemic. This case is ongoing.¹²³

Nine TPS recipients and five U.S. citizen children of TPS holders filed the class action lawsuit *Ramos et al v. Nielsen* in the U.S. District Court in the Northern District of California on March 12, 2018. The plaintiffs argued that the new DHS rule for determining whether to end TPS designations for immigrants from countries facing various crises violated their rights under the Fifth Amendment as well as requirements set out by the APA. On October 3, 2018, the judge granted a preliminary injunction in which the court determined that plaintiffs would suffer irreparable harm, including family separation and being forced to move back to countries where neither the children nor adults have any remaining ties. DHS subsequently appealed the decision to the Ninth Circuit. On September 14, 2020, the Ninth Circuit vacated the preliminary injunction having found that the district court did not have jurisdiction to review the plaintiffs APA claim because the TPS statute itself states that the Secretary of Homeland Security possesses full and unreviewable discretion in designating foreign states under the statute. After vacating the preliminary injunction, the Ninth Circuit remanded the case to the district court for further proceedings. The plaintiffs are likely to challenge the Ninth Circuit's decision.¹²⁴

Four noncitizens, on behalf of a proposed class of Temporary Protected Status recipients, filed the lawsuit *Moreno v. Nielsen* against DHS and the U.S. Citizenship and Immigration Services (USCIS) on February 22, 2018. The case was filed in the U.S. District Court for the Eastern District of New York to challenge the defendants' denial of their applications for lawful permanent resident status. On May 18, 2020, the court denied the plaintiffs' motion for a preliminary injunction. The court stated that the plaintiffs failed to make a "strong showing" of irreparable harm needed to obtain injunctive relief. The case is ongoing.¹²⁵

¹²² Miriam Jordan, "Judge Halts Trump Policy That Allows States to Bar Refugees," *The New York Times*, Jan. 15, 2020; see also *HIAS, Inc. v. Trump*, 415 F. Supp. 3d 669 (D. Md. 2020); Ann E. Marimow, "Trump's Refugee Resettlement Policy Blocked by Federal Appeals Court," *Washington Post*, Jan. 8, 2021; see also *HIAS, Inc. v. Trump*, Case no. 20-1160, 2021 WL 69994 (4th Cir. Jan. 8, 2021).

¹²³ See *NAACP v. United States Dep't of Homeland Sec.*, Case No. 18-0239, 2020 U.S. Dist. LEXIS 49818 (D. Md. 2020).

¹²⁴ See *Ramos v. Nielsen*, 975 F.3d 872 (9th Cir. 2020).

¹²⁵ See *Moreno v. Nielsen*, 460 F. Supp. 3d 291 (E.D.N.Y. 2020).

4. Asylum Cooperative Agreements

On January 15, 2020, the lawsuit *U.T. v. Barr* was filed in U.S. District Court for the District of Columbia by six plaintiffs, along with the Tahirih Justice Center and Las Americas Immigrant Advocacy Center. Represented by the Americans Civil Liberties Union, National Immigrant Justice Center, Center for Gender & Refugee Studies, and Human Rights First, the lawsuit challenged the Trump administration’s new policy of removing asylum seekers to Guatemala pursuant to an “asylum cooperative agreement.” The plaintiffs alleged that the government’s new policy violated the APA, the Immigration and Nationality Act (INA), and Foreign Affairs Reform and Restructuring Act of 1998 (FARRA). The case is ongoing.¹²⁶

5. The “Interim Final Rule”

The East Bay Sanctuary Covenant, Al Otro Lado, Innovation Law Lab, and the Central American Resource Center in Los Angeles filed the lawsuit *East Bay Sanctuary Covenant v. Barr* with the U.S. District Court in the Northern District of California on July 16, 2019. Represented by the American Civil Liberties Union, Southern Poverty Law Center, and the Center for Constitutional Rights, the plaintiffs challenged an interim final rule promulgated by the Attorney General and Acting Secretary of Homeland Security, which made noncitizens who transit through another country prior to reaching the southern border of the United States ineligible for asylum. On July 24, 2019, the plaintiffs’ motion for a preliminary injunction to prevent the government from taking any further action to implement the interim final rule was granted by the court. On August 16, 2019, the Ninth Circuit denied a stay for the application of the injunction inside its boundaries, but granted the stay for all locations outside the Ninth Circuit. On September 9, 2019, the judge granted the plaintiffs’ motion to restore the nationwide scope of the injunction, which was subsequently appealed by the defendants. The Supreme Court stayed the re-instated injunction on September 11, 2019 pending the Ninth Circuit’s decision on the appeal.¹²⁷ The Ninth Circuit affirmed the injunction in July 2020 and the case is ongoing.¹²⁸

6. Migrant Protection Protocols

On February 14, 2019, Innovation Law Lab and its co-plaintiffs filed the lawsuit *Innovation Law Lab v. Wolf* before the U.S. District Court for the Northern District of California. Co-plaintiffs of Innovation Law Lab include Al Otro Lado, Central American Resource Center of Northern California, Centro Legal de la Raza, University of San Francisco School of Law Immigration & Deportation Defense Clinic, and Tahirih Justice Center. The co-plaintiffs alleged that the Trump administration’s Migrant Protection Protocols, commonly referred to as the “Remain in Mexico” policy, violates the INA, the APA, and the United States’ duty under domestic and international law to not return people to dangerous condi-

¹²⁶ See *U.T. v. Barr*, Case no. 1:20-cv-00116-EGS (D.D.C. 2020).

¹²⁷ *Barr v. East Bay Sanctuary Covenant*, 140 S. Ct. 3 (Sept. 11, 2019).

¹²⁸ *East Bay Sanctuary Covenant v. Barr*, Case no. 10-16485, (9th Cir. 2020).

tions. On April 8, 2019, the district court judge ruled that the policy is unlawful and temporarily blocked its implementation. On May 7, 2019, the Ninth Circuit stayed the lower court's injunction. While a panel of the Ninth Circuit held that the policy is unlawful and lifted the stay in February 2020, the Supreme Court ultimately granted the federal government's application for a stay of the lower court's preliminary injunction that had blocked the implementation of the "Remain in Mexico" policy on March 11, 2020. The stay will remain in place until the Supreme Court resolves the government's appeal from the Ninth Circuit proceedings.¹²⁹

7. Revisions to Existing Asylum Practices

On December 21, 2020, Pangea Legal Services and Immigration Equality filed separate lawsuits, *Pangea Legal Services v. DHS* and *Immigration Equality v. DHS*, in the U.S. District Court for the Northern District of California to block the implementation of a final rule issued by the Department of Homeland Security and the Department of Justice on December 11, 2020. The rule, scheduled to go into effect on January 11, 2021, would have radically changed U.S. legal standards for asylum claims, including by barring aliens from asylum if they spent significant time in a third country before arriving in the United States, and effectively establishing a presumption against asylum claims rooted in gender-based persecution.¹³⁰ On January 8, 2021, the court granted a nationwide preliminary injunction against the rule pending further proceedings, in part based on the likelihood of irreparable harm without injunctive relief.¹³¹

¹²⁹Stephen Manning, "Innovation Law Lab v. Wolf," *Innovation Law Lab*, Feb. 28, 2020, <https://bit.ly/2TSfn3d>; see also Ramon Valdez, "U.S. Supreme Court Allows 'Remain in Mexico' To Stay In Effect," *Innovation Law Lab*, Mar. 11, 2020, <https://bit.ly/3w7DsBh>.

¹³⁰Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, 85 Fed. Reg. 80274, 8 C.F.R. parts 208, 235, 1003, 1208, 1235 (Dec. 11, 2020).

¹³¹*Pangea Legal Services v. U.S. Dep't of Homeland Sec.*, Case no. 20-Cv-09253-JD, 2021 WL 75756, at *1 (N.D. Cal. Jan. 8, 2021).

ANNEX 3

Key Documents Related to the U.S.-Guatemala Asylum Agreement

DOCUMENT 1: ATTORNEY GENERAL'S DETERMINATION



Office of the Attorney General
Washington, D. C. 20530

November 7, 2019

MEMORANDUM FROM THE ATTORNEY GENERAL

SUBJECT: Whether Guatemala's Refugee Protection Laws and Procedures Satisfy the "Access to a Full and Fair Procedure" Requirements of Section 208(a)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1158(a)(2)(A)

After careful consideration, I find that Guatemala's refugee protection laws and procedures satisfy the requirements of section 208(a)(2)(A) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1158(a)(2)(A). I make this decision based upon the Guatemalan Migration Code, its implementing regulations, and information provided by the Departments of State and Homeland Security following consultations between the United States and Guatemala.

Pursuant to a bilateral or multilateral agreement, section 208(a)(2)(A) of the INA authorizes the removal of an alien to a country that will provide the alien with "access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection" rather than allowing the alien to pursue such a claim in the United States. As the Department of Homeland Security has recognized, the perfect harmonization of a foreign country's asylum laws and procedures with the laws and procedures of the United States "is not a prerequisite to entering into responsibility-sharing arrangements."¹ Guatemala has satisfied the INA section 208(a)(2)(A) "access to a full and fair procedure" requirement because it has in place a sufficient protection system with accompanying procedures and laws. An applicant for protection in Guatemala has a meaningful opportunity to make a protection claim, receive a hearing and adjudication regarding that claim, and safely remain in Guatemala until his or her protection claim is resolved.

The phrase "access to a full and fair procedure" presumes that the third country has in place a process that comports with basic notions of procedural fairness. The Guatemalan system meets these basic requirements. For example, Guatemalan legal provisions and representations made by Guatemalan officials in exchanges with the U.S. State Department and the Department of Homeland Security indicate that Guatemala has a competent immigration authority with clear procedures for addressing initial asylum applications, including referral of claims to an adjudicative body. At the initial stages of the proceedings, the applicant receives oral guidance on how to present a claim along with information on rights, protections, and privileges. Asylum

¹ Notice of Proposed Rulemaking, *Implementation of the Agreement Between the Government of the United States of America and the Government of Canada Regarding Asylum Claims Made in Transit and at Land Border Ports-of-Entry*, 69 Fed. Reg. 10,620, 10,620 (Mar. 8, 2004) (Department of Homeland Security).

Subject: Whether Guatemala's Refugee Protection Laws and Procedures Satisfy the "Access to a Full and Fair Procedure" Requirements of Section 208(a)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1158(a)(2)(A)

and refugee-status grantees in Guatemala receive notice of the decisions granting them relief along with the ability to acquire identification facilitating access to health services, education, and employment. Guatemala also provides notice of the denial of protection applications and gives applicants the right to appeal an adverse decision within ten days of receiving the notification of denial. Applicants may remain in Guatemala during any appellate process.²

Guatemala has also adopted laws barring *refoulement* of refugees that are consistent with the *non-refoulement* obligations described in Article 33 of the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees. Article 46 of Guatemala's Migration Code generally establishes the substance of Guatemala's *non-refoulement* duties and commitments, and those commitments appear to meet or exceed the standards of Article 33 of the 1951 Refugee Convention and the 1967 Protocol. For example, Guatemalan law requires that, should asylum or refugee status be denied, an applicant will not be returned to "his or her country when there is a credible reason to fear serious danger to his or her life, physical integrity, and freedom."³ Guatemalan Migration Code Article 12 also guarantees that all migrants are not to be subject to "any form of violence," including torture or cruel or degrading treatment.

Therefore, I find that the Guatemalan refugee protection system satisfies the "access to a full and fair procedure" requirement of INA section 208(a)(2)(A).

11/7/19
Date


William P. Barr
Attorney General

² See Regulations on the Procedure for the Protection, Determination, and Recognition of Refugee Status in the State of Guatemala, Order No. 2-2019, art. 17 (2019); see also Migration Code, Congressional Decree, No. 44-2016, arts. 43, 48, 84, & 177-87 (2016) (Guat.).

³ Migration Code at art. 46.

DOCUMENT 2: DHS' DETERMINATION

Secretary
U.S. Department of Homeland Security
Washington, DC 20528



MEMORANDUM FROM THE SECRETARY

SUBJECT: Whether Guatemala's Refugee Protection Laws and Procedures Satisfy the "Access to a Full and Fair Procedure" Requirements of Section 208(a)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1158(a)(2)(A).

After careful consideration, I find that Guatemala's refugee protection laws and procedures satisfy the requirements of Immigration and Nationality Act ("INA" or "the Act"), Section 208(a)(2)(A). This decision was made after a careful review of the available information found in the Guatemalan Migration Code, their implementing regulations, an active dialogue between our two States, information provided by the Department of State, information provided by the United Nations High Commissioner for Refugees (UNHCR), and information from other sources.

As the Department of Homeland Security has long recognized, the perfect harmonization of a foreign country's asylum laws and procedures to the laws and procedures in the United States "is not a prerequisite to entering into responsibility-sharing arrangements."¹

Guatemala has satisfied the INA Section 208(a)(2)(A) requirement because it has in place a sufficient protection system with accompanying procedures and laws. Applicants for protection in Guatemala have a meaningful opportunity to make a protection claim, receive a hearing and adjudication regarding that claim, and safely remain in Guatemala until their protection claim is resolved.

Additionally, the phrase "full and fair procedure" presumes that the third country have in place a process that comports with basic notions of procedural fairness. The Guatemalan system meets these basic requirements. In Guatemala, an interpreter is available for the applicant during the interview, oral guidance is given to the applicant at the initial stages of the proceedings on how to present a claim along with information on rights, protections, and privileges, and an appeal process is provided. The applicant may also remain in Guatemala during the appeals process. Guatemalan law has adopted and maintains laws against *refoulement* of refugees that are in accord with its *non-refoulement* obligations described in Article 33 of the 1951 Convention Relating to the Status of Refugees 1951 and the 1967 Protocol Relating to the Status of Refugees, at a minimum.

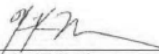
¹ 69 Fed. Reg. 10,620-01, 10,620 (Mar. 8, 2004).

Subject: Whether Guatemala's Refugee Protection Laws and Procedures Satisfy the "Access to a Full and Fair Procedure" Requirements of Section 208(a)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1158(a)(2)(A).
Page 2

Additionally, non-binding UNHCR guidance provides another official's view in the context of safe third country considerations. The UNHCR Handbook is not definitive, but it indicates that a variety of procedures may be appropriate.²

I need not conclude that all of these UNHCR Handbook guidelines must be met for a country to provide "full and fair" procedures. Notwithstanding this, the Guatemalan system appears to satisfy each of them based on the available information. For example, it appears Guatemala has a competent immigration authority that has clear instruction for addressing initial asylum applicants, including referral to an adjudicative body. As for Guatemala's compliance with its *non-refoulement* obligations, Article 46 of the Migration Code generally establishes what those *non-refoulement* duties and obligations are, and they appear to meet or exceed the standards of Article 33 of the 1951 Refugee Convention and the 1967 Protocol. For example, Guatemalan law requires that, should asylum or refugee status be denied, an applicant will not be return to "his or her country when there is a credible reason to fear serious dangers to his or her life, physical integrity, and freedom."³ Guatemalan Migration Code Article 12 also guarantees all migrants are not to be subject to "any form of violence," including torture, cruel, or degrading treatment. Guatemalan law further provides that asylum applicants will receive guidance during their application process, and it has a robust protection system in place under its laws, including the availability of psychologist during the refugee interview.⁴ It also appears that a refugee applicant and refugee status grantee in Guatemala are informed of this decision and issued certifying documentation. Guatemala provides applicants the right to appeal an adverse decision on protection applications, which they must do within 10 days of notification of the decision. Applicants are also allowed to stay in Guatemalan during the pendency an appeal.

Therefore, and based on the information provided, I find that the Guatemalan refugee protection system satisfies the "access to a full and fair procedure" requirements of INA § 208(a)(2)(A).


Kevin K. McAleenan
Acting Secretary of Homeland Security

OCT 16 2019
Date

² See UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status ("UNHCR Handbook") ¶ 189 (Jan. 1992 ed.). Notably, the UNHCR Handbook's most recent reissuance was in February 2019. However, the substance between the 2019 version of the UNHCR Handbook and the 1992 UNHCR Handbook remains unchanged.

³ Migration Code, Congressional Decree, No. 44-2016, art. 46 (2016) (Guat.).

⁴ See Regulations on the Procedure for the Protection, Determination, and Recognition of Refugee States in the State of Guatemala. Order No. 2-2019, at art. 17 (2019); see also Migration Code art. 180.

DOCUMENT 3: DIPLOMATIC CABLE: U.S. EMBASSY GUATEMALA
ASSESSMENT OF THE GUATEMALAN ASYLUM SYSTEM

UNCLASSIFIED

SBU



MRN: 19 GUATEMALA 536
Date/DTG: Jun 12, 2019 / 121741Z JUN 19
From: AMEMBASSY GUATEMALA
Action: WASHDC, SECSTATE ROUTINE
E.O.: 13526
TAGS: PREL, PREF, PHUM, SMIG, KCOM, GT
Captions: SENSITIVE
Reference: 19 STATE 61360
Subject: Assessment of the Guatemalan Asylum System

1. (U) Post provides the following responses to the request in Ref A for information on the Guatemalan Asylum System. The Director for the Guatemalan Institute for Migration, the United Nations High Commissioner for Refugees (UNHCR) Regional Representative and local UNHCR Protection Officer provided information for the responses.

(SBU) Eligibility to Apply for Asylum in Guatemala:

- Where can asylum seekers apply for relief in Guatemala?

Asylum seekers can apply at the Guatemalan Institute for Migration (IGM) office in Guatemala City, and at any land, sea, or air port of entry.

- Is there a deadline or fee to apply?

No, there is no deadline or fee. Though it is not codified, IGM told Post that the National Police (PNC) are trained to bring anyone that wants to claim asylum to the IGM offices.

- Are asylum seekers protected from return while their application is pending?

Yes, while asylum seekers wait for adjudication, they receive temporary permanent residency (Article 17 subparagraph (c) of the Rules of Procedure for Refugee Status).

(SBU) Access to Information and Assistance:

- What kind of information does the Guatemalan government provide to asylum seekers regarding the process to apply for asylum or equivalent protection?

IGM said applicants receive information about legal status and how and when to appear for an interview at IGM. "After the border agent or IGM official accepts a verbal or oral request for asylum, they immediately transmit it in writing to CONARE's IGM support staff. After IGM support staff receive the written request, they provide guidance to the asylum applicant on the application procedures. CONARE's IGM support staff give the applicant the application form and schedules an appointment for a personal interview regarding their claim," (Migration Authority Agreement, Title II, Chapter II, Article 17).

According to IGM, at ports of entry, the border agent provides basic information regarding the asylum process to the asylum seeker. Post cannot confirm the consistency or quality of the information officials provide. If the applicant applies at IGM in Guatemala City, case officers who focus specifically on asylum cases handle the case.

- Are asylum seekers permitted access to an interpreter (if necessary), other explanatory assistance, and/or counsel during the application process?

Yes, but IGM said it currently has only English-language interpretation services available. Most applicants are from Spanish-speaking countries. However, IGM also receives a number of applications from the Middle East. It would like to expand its interpretation services to include Arabic.

- What kind of accommodations are provided to unaccompanied children or persons with disabilities?

The Secretariat for Social Welfare provides shelter for unaccompanied children, while IGM works with the Solicitor General's Office to make a determination on the children's asylum applications, usually denying asylum and returning children to their home countries. There are no special protections for persons with disability under the law. IGM told Post it prioritizes cases for the elderly and others with special considerations.

- Do asylum seekers in Guatemala have access to social services or the right to work while they wait for asylum claims to be adjudicated?

Asylum seekers are granted work permits according to Article 8 of the Rules of Procedure for Refugee Status, and Articles 6, 48, 53, 84 and 101 of the Migration Code. Asylum seekers receive a provisional permit that gives them access to health services and primary and secondary education. However, employment in the formal sector in Guatemala can be hard to find, as is the case for the general Guatemalan population. Claimants receive medical insurance through their employer, and without insurance, medical attention is limited to emergencies only.

According to UNHCR, despite legal entitlement, documentation issued to refugees lacks recognition by many public and private institutions, including banks. The new Migration Authority Agreement, which comes into effect in August, recognizes the role of the Guatemalan National Registry of Persons (RENAP) in issuing documents to asylum seekers. Having identification documents issued by RENAP should improve their recognition.

(SBU) Refugee Status Determination Procedures:

- Who bears the burden of proof? What is the relevant evidentiary standard?

The Rules of Procedure for Refugee Status do not specifically address who bears responsibility for burden of proof. CONARE consists of working-level technical representatives from the Ministries of Government, Labor and Social Development, Foreign Affairs, and a representative of the IGM director. CONARE's primary function is to make a technical recommendation to the National Migration Authority (AMN) to approve or deny a case, based on its assessment of whether the case meets burden of proof.

The representatives in CONARE remain on the payrolls of their respective ministries. According to UNHCR, CONARE has a principal participant and stand-in from each institution. Currently none of these people is dedicated to the council full-time and asylum is only one of their many portfolios.

CONARE has met three to four times to draft recommendations on asylum cases since March 2019, when the Rules of Procedure for Refugee Status came into effect. It has made about 30 determinations: 20 recommending asylum and five to ten recommending refusal. UNHCR told Post historically Guatemala approves 90-95% of asylum claims. Although council members have UNHCR training on legitimacy guidelines, UNHCR said the council probably made determinations on the first 30 cases based on "gut decision" and would need more training in evidentiary standards. CONARE has invited UNHCR to attend meetings this month to observe its process.

Before CONARE makes recommendations, investigators on IGM's payroll and seconded to CONARE collect information to verify the veracity of the claim. Investigators will ask the applicant to obtain proof of citizenship from his or her respective consulate in Guatemala if the claimant has no valid ID. Investigators will then verify the residence of the claimant with country officials and the level of threat in that area. Investigators run an INTERPOL background check on the claimant and seek to obtain police records from the country of origin, if available. The investigators provide information to CONARE to help corroborate or disprove the applicant's claim as well as highlight cases of blatant criminality or terrorism. CONARE can ask investigators to gather more information before making a recommendation for approval or denial of the case.

- Are there any limitations on the types of evidence that the asylum seeker can introduce?

No.

- Does Guatemalan law incorporate the definition of "refugee" from Article 1 of the Refugee Convention?

The Migration Authority Agreement, Title I, Article 4 lays out three different profiles for who may request asylum in Guatemala. The first definition mirrors the convention definition of an asylee.

- Does the Government of Guatemala exclude asylum seekers from protection on any basis other than those provided for in Articles 1 and 33(2) of the Refugee Convention?

No.

- Does Guatemalan law protect individuals from return to torture? If so, does Guatemalan law incorporate the standard from Article 3 of the Convention Against Torture?

The Migration Code does not clearly state a prohibition against returning individuals who may face torture. However, IGM said Guatemala considers the Convention Against Torture and all other conventions in its asylum processing. UNHCR confirmed that Guatemala follows all conventions in practice. According to IGM, Guatemalan law cannot run against these conventions without full declaration of intent to abandon the convention and subsequent congressional approval.

- Who is responsible for making the final determination about asylum?

The National Migration Authority (AMN) makes the final decision on asylum cases and ultimately grants asylum. CONARE, as a technical body, assesses the evidence and makes a recommendation to AMN, as the political body, to approve or deny an asylum claim. AMN is composed of seven governmental institutions: four ministries, the Guatemalan Institute for Migration (IGM), the Council for Guatemalan Migrants, and the Office of the Vice-President as the head. Like CONARE, AMN has a principal participant and stand-in from each institution, none of whom is full-time dedicated to asylum determinations.

AMN has not met since the March 2019 Rules of Procedure for Refugee Status came into effect, and therefore has not reviewed CONARE's recommendations on 30 asylum cases. Until AMN reviews CONARE's recommendations and makes a decision to approve or deny these cases, they remain pending. It is unclear whether CONARE will present a single recommendation for each case or each board member will submit individual recommendations to his or her agency counterpart on the AMN. UNHCR is encouraging the Guatemalan government to streamline this process as much as possible.

(SBU) Appeal Rights:

- If a claim is denied, is the applicant informed of the grounds of the decision in writing?

Yes, CONARE is responsible for notifying the applicant of the final decision to approve or deny a claim after AMN makes its final determination. There is no requirement in the law that CONARE provide a justification for a denial.

- Is there a mechanism to appeal asylum determinations?

Yes. Asylum seekers have ten days to appeal the denial to the AMN, through a legal action called *recurso de reposición*. The AMN must uphold, overturn, or modify the decision within five days. Although the Migration Code does not clearly set out the option, asylum seekers could also file a petition for *amparo*, a legal remedy that challenges the constitutionality of the denial and acts as a stay.

(SBU) Nature of Protection Granted:

- What rights or benefits are provided to foreign nationals who are granted asylum or equivalent protection under Guatemalan law?

Asylees have the right to a national identification card in order to access education, health services, and work permits. They receive a separate legal status as an asylee, after which they can apply for permanent residency under certain circumstances.

(SBU) Capacity of the National Migration Authority (AMN) and the National Refugee Commission (CONARE):

- How many asylum claims does the Government of Guatemala adjudicate per year?

IGM handles approximately 100-150 asylum cases per year that proceed past the initial interview. IGM currently has over 400 pending asylum cases. IGM and CONARE were unable to work on cases for over a year while the Rules of Procedure for Refugee Status were being drafted. As of March 2019, there was a backlog of 210 cases. Though CONARE has been able to make about 30 recommendations since March, the AMN has not reached a decision on these cases. IGM and CONARE have created a plan to work through the backlog by the end of the calendar year. CONARE will meet biweekly instead of monthly over the next few months to make recommendations on the backlogged cases. Historically, Guatemala has had capacity to process about 100-150 cases per year.

- With increased assistance, how many asylum claims could Guatemala reasonably be expected to adjudicate per year?

The Office of International Migration Relations (ORMI), a specialized unit within the IGM, handles asylum claims. ORMI has three caseworkers, three investigators seconded to CONARE, and one supervisor to complete asylum casework. IGM said ORMI staffing was sufficient to complete the current average of 100-150 cases yearly, after completing the 210 cases in backlog. IGM said it could complete investigations within 30 days and send cases to CONARE within 3-4 months without a backlog.

Under the new Migration Authority Agreement, the entire National Migration Authority (AMN), including IGM, is moving out of the Ministry of Government in August to become a “decentralized entity.” UNHCR explained that ORMI would disappear, and responsibility for asylum processing would fall under a new Sub-Department for International Migration Relations. According to IGM and UNHCR, the new budget is still in negotiation, but IGM believes funding and resources would increase for asylum processing under this new entity. IGM continues to ask for technical assistance to hire psychologists and interpreters and update databases.

- Do asylum decision-makers receive training, including about non-refoulement obligations, and are there safeguards against corruption?

According to UNHCR, no cases of refoulement have been reported in Guatemala. According to IGM, all border officers receive training on initial processing of asylum claims including non-refoulement obligations. IGM told Post that border officers must submit all claims to IGM, but also said border officers were trained to decide if the claimant’s initial reason for asylum was valid to begin a case. IGM was unable to clarify the level of oversight over the officer’s initial decision at ports of entry.

(SBU) UNHCR:

- Why has UNHCR assessed that Guatemala’s Migration Code does not provide sufficient safeguards against refoulement?

UNHCR said that, while on the whole, the Migration Code is a positive step, some provisions may not be fully compatible with the principles of non-refoulement and nonpenalization for irregular entry. Specifically, Article 46 leaves some ambiguity with respect to UNHCR's role in preventing refoulement. Article 50 states that asylum seekers will not face criminal charges due to irregular entry, however they will have to pay administrative fines and may also be deported from Guatemala.

- Does the Government of Guatemala have a Memorandum of Understanding with UNHCR that outlines the government's cooperation with UNHCR on issues including technical assistance on and monitoring of refugee protection, access to refugees and asylum seekers in detention, and provision of basic services and assistance to refugees and asylum seekers? If so, please share a copy.

Currently UNHCR operates in Guatemala under the general UNDP framework and does not have a headquarters agreement with the Government of Guatemala. In December 2015, UNHCR and the Ministry of Foreign Affairs signed a MoU that includes various commitments to strengthen the asylum system in Guatemala. However, it expired in December 2017. UNHCR has proposed an extension of that MoU or a formal engagement with the Government, which has not materialized thus far. Following a meeting between the UNHCR Regional Representative and the Vice President last month, UNHCR has formally offered to sign a MoU with the AMN to strengthen their asylum capacity, to which it has not yet received a reply.

(SBU) Other Factors for Consideration

- Ratification of Safe Third Country Agreement in Guatemala

Post reached out to a former Solicitor General and a former Foreign Minister to determine if the Guatemalan congress would need to ratify a Safe Third Country Agreement. Both stated that they believe congressional ratification is necessary since the Guatemalan state would assume responsibility for individuals requesting asylum as well as the fact that it would be assuming a series of responsibilities to their countries of origin. In addition, article 171 of the Guatemalan constitution requires congressional ratification of international agreements that "affect the existing laws where this Constitution may require the same majority of votes"; that create a financial obligation for the state that is either equal to one percent of the budget or an indeterminate amount; or that result in the state submitting itself to international jurisdiction or an international judicial decision.

- Crime Statistics and Security

Guatemala's homicide rate in 2018 was about 22 per 100,000 inhabitants. In 2018, the police reported approximately 3,881 homicides, 4,246 aggravated assaults, and over 2,500 missing persons. Despite the slight downward trend, Guatemala remains among the most dangerous countries in the world, according to several security providers. Endemic poverty, an abundance of weapons, a legacy of societal violence, and the presence of organized criminal gangs Barrio 18 (18th Street) and Mara Salvatrucha (MS13) all contribute to the violent crime. Guatemala's high murder rate appears driven by narco-trafficking activity, gang-related violence, a heavily armed population, and police/judicial system unable to hold many criminals accountable.

Extortion is extremely common and affects all sectors of society with public bus and taxi drivers being the easiest and most common victims. However, small businesses, the U.S. private sector,

as well as local national employees of the U.S. Embassy were all frequent targets in 2018. The gangs also target schoolchildren, street vendors, and private citizens. Although in recent years the number of reported extortions increased, most incidents are still unreported. Gang members usually punish non-compliant victims with violent assault or murder, and their family members are also victimized as punishment.

According to official government crime statistics, sexual assault numbers slightly decreased from 551 in 2017 to 527 in 2018. The Embassy believes, however, that the actual numbers of sexual assaults are far greater; cultural stigmas and sporadic police presence in rural areas cause significant underreporting. (Guatemala 2019 Crime and Safety Report. OSAC. <https://www.osac.gov/Content/Report/5f31517e-62bb-4f2c-8956-15f4aeaab930>)

Signature: Arreaga

UNCLASSIFIED
SBU

ANNEX 4**State Department Responses to
SFRC Questions for the Record**

**DOCUMENT 1: STATE DEPARTMENT RESPONSES
—SUBMITTED DECEMBER 2, 2019**

From the SFRC Nomination Hearing of Mr. Stephen Biegun for Deputy Secretary of State,
November 20, 2019

Question 228: Over the last few months, there have been a series of “asylum cooperation agreements” that the Department of Homeland Security recently signed with Honduras (September 25, 2019), Guatemala (July 26, 2019) and El Salvador (September 20, 2019). As far as we can determine, none of these agreements have yet been transmitted to Congress, as required by U.S. law, despite the fact that the 60-day window for reporting appears to have passed for the Guatemala agreement. Can you please explain why these congressionally mandated reports have not yet been transmitted, and when we can expect them?

Answer 228: I have had no involvement with these issues in my capacity as Special Representative for North Korea. However, I am advised of the following: Pursuant to 1 U.S.C. § 112b, “the Secretary of State shall transmit to the Congress the text of any international agreement (including the text of any oral international agreement, which agreement shall be reduced to writing), other than a treaty, to which the United States is a party as soon as practicable after such agreement has entered into force with respect to the United States but in no event later than sixty days thereafter.” The agreements about which you asked did not enter into force immediately upon signature. The Asylum Cooperation Agreement with Guatemala entered into force on November 15, 2019, and will be transmitted to Congress within 60 days of that date. Asylum Cooperation Agreements with El Salvador and Honduras have not entered into force. Should they enter into force in the future, they will be transmitted to Congress within 60 days of the date of their entry into force.

Question 229: Do you commit to transmitting these agreements to Congress?

Answer 229: As indicated in my previous answer, I am advised of the following: The Asylum Cooperation Agreement with Guatemala entered into force on November 15, 2019, and will be transmitted to Congress within 60 days of that date. The Asylum Cooperation Agreements with El Salvador and Honduras have not entered into force. Should they enter into force in the future, they will be transmitted to Congress within 60 days of the date of their entry into force.

Question 230: What is your assessment of security conditions in El Salvador and do you believe the country is able to provide safety and security to asylum seekers if they are sent to El Salvador?

Answer 230: I understand an individual cannot be removed to a country in which the individual would be persecuted or tortured. The Attorney General and the Secretary of Homeland Security must certify that all countries with which the United States signs Asylum Cooperation Agreements, including El Salvador, meet the requirements of 8 U.S.C. § 1158(a)(2)(A) prior to

implementation of said agreements, including that individuals will have access to a full and fair procedure for adjudicating a claim for asylum or equivalent temporary protection.

Question 231: What is your assessment of the Salvadoran asylum system?

Answer 231: El Salvador has a nascent asylum system. Through its international humanitarian partners, the Department is providing support to help strengthen the capacity of the Salvadoran asylum system to allow migrants seeking protection to receive that protection closer to home. I understand that prior to implementing any Asylum Cooperation Agreements, the Attorney General and the Secretary of Homeland Security must certify that a country meet the requirements of 8 U.S.C. § 1158(a)(2)(A), including that the individual will have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection, and that individuals cannot be removed to a country in which the individual would be persecuted.

Question 232: What is your assessment of security conditions in Honduras and do you believe that the country is able to provide safety and security to asylum seekers if they are sent to Honduras?

Answer 232: I understand no individual can be sent to a country in which the individual would be persecuted or tortured. The Attorney General and the Secretary of Homeland Security must certify that Honduras meets the requirements of 8 U.S.C. § 1158(a)(2)(A) prior to implementation of the Asylum Cooperation Agreement, including that individuals will have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection.

Question 233: What is your assessment of the Honduran asylum system?

Answer 233: Honduras has a nascent asylum system. Through its international humanitarian partners, the Department is providing support to help strengthen the capacity of the Honduran asylum system to allow migrants seeking protection to receive that protection closer to home. I understand that prior to implementing any Asylum Cooperation Agreements, the Attorney General and the Secretary of Homeland Security must certify that a country meet the requirements of 8 U.S.C. § 1158(a)(2)(A), including that the individual will have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection, and that individuals cannot be removed to a country in which the individual would be persecuted.

Question 234: What is your assessment of security conditions in Guatemala and do you believe that the country is able to provide safety and security to asylum seekers if they are sent to Guatemala?

Answer 234: On November 15, the agreement the United States signed with Guatemala entered into force following certification by the Attorney General and the Secretary of Homeland Security pursuant to 8 U.S.C. § 1158(a)(2)(A) that individuals seeking asylum who are removed

to Guatemala will have access to a full and fair procedure for determining their asylum claim or equivalent protection and following an exchange of diplomatic notes. Individuals who would be persecuted or tortured in Guatemala will not be sent to that country pursuant to this same statutory provision.

Question 235: What is your assessment of the Guatemalan asylum system?

Answer 235: Guatemala and the United States signed an Asylum Cooperation Agreement on July 26. The Attorney General and Secretary of Homeland Security determined that Guatemala's asylum system provides full and fair access to individuals seeking protection, as required by U.S. law, prior to the ACA entering into force on November 15. The first individual was sent to Guatemala under the agreement on November 21. While the ACA is a bilateral agreement, humanitarian assistance efforts funded by the Bureau of Population, Refugees, and Migration complement its implementation through partners like the UN High Commissioner for Refugees and International Organization for Migration. The ACA helps address the humanitarian and security crisis at our southern border, while fulfilling our mandate to provide protection and resolve the plight of persecuted and uprooted people.

DOCUMENT 2: STATE DEPARTMENT RESPONSES
—SUBMITTED DECEMBER 23, 2019

From the SFRC Hearing “U.S. Policy in Mexico and Central America: Ensuring Effective Policies to Address the Crisis at the Border,” Assistant Secretary for International Narcotics and Law Enforcement Affairs Kirsten Madison and Acting Assistant Secretary for Western Hemisphere Affairs Michael Kozak, September 25, 2019

Question 7: Please provide a list of all agreements, instruments, and arrangements, binding or non-binding; annexes; appendices; implementation plans, guidance and other related documents that the Trump Administration has signed, agreed to, or otherwise joined with Mexico and the Central American governments so that we can finally get a clear picture of what this Administration is doing in the name of the American people? Please ensure that the list includes agreements signed by the Department of Homeland Security, Department of Justice, Department of Defense, and all of their respective agencies and instrumentalities. Please ensure that the list includes the title of the agreement; the date it was signed; the entities and officials that signed it; and whether the agreement includes any supplemental agreements, annexes or implementation plans (or other supporting documents).

Answer 7: The Department has provided all relevant agreements under the Case-Zablocki Act and will continue to transmit agreements consistent with the requirements of the Act moving forward. This includes the Joint Declaration and Supplementary Agreement the Department transmitted to the Congress pursuant to the Case Act on August 6, 2019.

Question 8: Please provide a copy of all of these agreements, arrangements, instruments, supplemental agreements, annexes, appendices and implementation plans.

Answer 8: The Department has provided all relevant agreements under the Case-Zablocki Act and will continue to transmit agreements consistent with the requirements of the Act moving forward. This includes the Joint Declaration and Supplementary Agreement the Department transmitted to the Congress pursuant to the Case Act on August 6, 2019. With respect to the Department’s reporting practice with regard to the Case Act, my understanding is that the Department follows the criteria set out at 22 CFR 181.2 in deciding whether any undertaking, oral agreement, document, or set of documents, including an exchange of notes or of correspondence, constitutes an international agreement within the meaning of the Case Act, and that it will continue to do so. These criteria include the identity and intention of the parties; the significance of the arrangement; specificity, including objective criteria for determining enforceability; the necessity for two or more parties; and the form of the instrument.

Question 9: What agreements has the United States Government signed with the Government of El Salvador since January 1, 2017. As the State Department is the lead agency on U.S. diplomacy with foreign governments, please ensure that the list includes agreements signed by the Department of Homeland Security, Department of Justice, Department of Defense, and all of their respective agencies and instrumentalities. Please ensure that the list includes the title of the

agreement; the date it was signed; the entities and officials that signed it; and whether the agreement includes any supplemental agreements, annexes or implementation plans (or other supporting documents). Please provide a copy of all of these agreements, supplemental agreements, annexes, and implementation plans.

Answer 9: The Asylum Cooperation Agreements with El Salvador has not yet entered into force. Should it enter into force in the future, it will be transmitted to Congress within 60 days of the date of their entry into force. Pursuant to 1 U.S.C. § 112b, "the Secretary of State shall transmit to the Congress the text of any international agreement (including the text of any oral international agreement, which agreement shall be reduced to writing), other than a treaty, to which the United States is a party as soon as practicable after such agreement has entered into force with respect to the United States but in no event later than sixty days thereafter."

Question 10: What agreements has the United States Government signed with the Government of Guatemala since January 1, 2017. As the State Department is the lead agency on U.S. diplomacy with foreign governments, please ensure that the list includes agreements signed by the Department of Homeland Security, Department of Justice, Department of Defense, and all of their respective agencies and instrumentalities. Please ensure that the list includes the title of the agreement; the date it was signed; the entities and officials that signed it; and whether the agreement includes any supplemental agreements, annexes or implementation plans (or other supporting documents). Please provide a copy of all of these agreements, supplemental agreements, annexes, and implementation plans.

Answer 10: The Asylum Cooperation Agreement with Guatemala entered into force on November 15, 2019, and will be transmitted to Congress within 60 days of that date. Pursuant to 1 U.S.C. § 112b, "the Secretary of State shall transmit to the Congress the text of any international agreement (including the text of any oral international agreement, which agreement shall be reduced to writing), other than a treaty, to which the United States is a party as soon as practicable after such agreement has entered into force with respect to the United States but in no event later than sixty days thereafter." In addition, the Department of Homeland Security and Guatemala's Ministry of Government signed a Memorandum of Cooperation (MOC) on May 27, 2019. This MOC describes areas in which the two governments commit to work in good faith to enhance cooperation on border security, training, joint actions to counter illicit flows of people, drugs, and money, and improvements in the identification, administration, and detention of illegal immigrants. For this MOC with Guatemala, I would refer you to the Department of Homeland Security for further information.

Question 11: What agreements has the United States Government signed with the Government of Honduras since January 1, 2017. As the State Department is the lead agency on U.S. diplomacy with foreign governments, please ensure that the list includes agreements signed by the Department of Homeland Security, Department of Justice, Department of Defense, and all of their respective agencies and instrumentalities. Please ensure that the list includes the title of the agreement; the date it was signed; the entities and officials that signed it; and whether the agreement includes any supplemental agreements, annexes or implementation plans (or other

supporting documents). Please provide a copy of all of these agreements, supplemental agreements, annexes, and implementation plans.

Answer 11: The Asylum Cooperation Agreement with Honduras has not entered into force. Should it enter into force in the future, it will be transmitted to Congress within 60 days of the date of their entry into force. Pursuant to 1 U.S.C. § 112b, “the Secretary of State shall transmit to the Congress the text of any international agreement (including the text of any oral international agreement, which agreement shall be reduced to writing), other than a treaty, to which the United States is a party as soon as practicable after such agreement has entered into force with respect to the United States but in no event later than sixty days thereafter.”

Question 18: What specific steps does the United States want Guatemala to take prior to obligating new U.S. foreign assistance for Guatemala? Has Guatemala taken any such steps? What is the potential timeline for reinstating U.S. foreign assistance to Guatemala?

Answer 18: We expect the government of Guatemala to take action to stem irregular migration to the United States, such as combatting migrant smuggling and human trafficking rings, enhancing border security, dissuading its citizens from illegally immigrating, and receiving and reintegrating its returned citizens. Guatemala has taken important steps in this direction in recent weeks, including signing an H2A agreement concerning temporary agricultural workers; an Asylum Cooperation Agreement; a border security arrangement; and a biometrics data sharing arrangement. Providing appropriate assistance to help our counterparts carry out these measures will be part of our strategy and appropriate Congressional consultations and notifications will occur as the strategy is implemented.

Question 22: What specific steps does the United States want Honduras to take prior to obligating new U.S. foreign assistance for Honduras? Has Honduras taken any such steps? What is the potential timeline for reinstating U.S. foreign assistance to Honduras?

Answer 22: We expect the government of Honduras to take action to stem migration to the United States, such as combatting migrant smuggling and human trafficking rings, enhancing border security, dissuading its citizens from illegally migrating, and receiving and reintegrating its returned citizens. Honduras has taken important steps in this direction in recent weeks, including signing an Asylum Cooperation Agreement and agreeing to further discussions on additional measures. Providing appropriate assistance to help our counterparts carry out these measures will be part of our strategy and appropriate Congressional consultations and notifications will occur as the strategy is implemented.

Question 25: Did the State Department provide any assessments or evaluations to DHS regarding the capacity of the Salvadoran, Guatemalan, and Honduras migration and asylum systems prior to DHS signing the agreements? If so, what was the content of these assessments or evaluations? How and by who were such assessments and evaluations transmitted to DHS?

Answer 25: I cannot discuss internal and interagency deliberations, nor can I discuss specific documents or communications that are involved in such deliberations.

Question 26: Does the State Department currently assess that the Government of El Salvador has the capacity to receive by asylum seekers that reached the U.S. border? If so, how many asylum seekers does the State Department assess that the Government of El Salvador is capable of receiving back on a monthly basis?

Answer 26: The Attorney General and the Secretary of Homeland Security must certify that these countries meet the requirements of 8 U.S.C. § 1158(a)(2)(A) prior to implementation, including that individuals cannot be removed to a country in which the individual would be persecuted and that the individual will have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection.

Question 27: What is the name of the Salvadoran asylum agency? What is its annual budget? How many employees does it have?

Answer 27: The Commission for Refugee Status (CODER) is responsible for refugee status determinations for the Salvadoran government and is staffed by employees of the Ministry of Foreign Affairs. CODER does not have its own budget.

Question 28: What is the name of the Salvadoran migration agency? What is its annual budget? How many employees does it have?

Answer 28: The Dirección General de Migración y Extranjería is the organization within the Government of El Salvador responsible for migration issues. Pursuant to this question, the Department of State is seeking specific information regarding its budget and staffing but has not received a response at this time.

Question 29: Does the State Department currently assess that the Government of Guatemala has the capacity to receive by asylum seekers that reached the U.S. border? If so, how many asylum seekers does the State Department assess that the Government of Guatemala is capable of receiving back on a monthly basis?

Answer 29: The Attorney General and the Secretary of Homeland Security must certify that a country meet the requirements of 8 U.S.C. § 1158(a)(2)(A) prior to implementation, including that individuals cannot be removed to a country in which the individual would be persecuted and that the individual will have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection.

Question 30: What is the name of the Guatemalan asylum agency? What is its annual budget? How many employees does it have?

Answer 30: The National Commission for Refugees (CONARE) is the Guatemalan agency responsible for asylum issues. It has four participating officials (one from the National Migration Institute (IGM), and one from each of the Ministries of Government, Labor and Social Development, and Foreign Affairs). Currently none of these officials is dedicated to CONARE full-time. CONARE meets to review asylum petitions and submit recommendations to the National Migration Authority (AMN) for final decision. The Office of International Migration Relations (ORMI) has seven full-time employees (three caseworkers, three investigators seconded to CONARE, and one supervisor). They conduct investigations in support of CONARE recommendations. The Department of State has not yet been able to confirm what CONARE's current budget is. With funding from the Department of State's Bureau of Population, Refugees, and Migration (PRM) UNHCR is assisting the government of Guatemala in scaling up its asylum capacity over the coming year.

Question 31: What is the name of the Guatemalan migration agency? What is its annual budget? How many employees does it have?

Answer 31: The Government of Guatemala is currently in the process of institutional reform to strengthen its migration management capabilities. Under the new pending Migration Authority Agreement, the National Migration Authority (AMN), including the National Migration Institute (IGM), was scheduled to move out of the Ministry of Government in August 2019 to become a "decentralized entity." The AMN is composed of representatives from seven governmental institutions: four ministries, the IGM, the Council for Guatemalan Migrants, and the Office of the Vice-President as the head. It does not have its own budgeted staff. The budget for the newly decentralized AMN was still under negotiation as of October 2019.

Question 32: Does the State Department currently assess that the Government of Honduras has the capacity to receive by asylum seekers that reached the U.S. border? If so, how many asylum seekers does the State Department assess that the Government of Honduras is capable of receiving back on a monthly basis?

Answer 32: The Attorney General and the Secretary of Homeland Security must certify that a country meet the requirements of 8 U.S.C. § 1158(a)(2)(A) prior to implementation, including that individuals cannot be removed to a country in which the individual would be persecuted and that the individual will have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection.

Question 33: What is the name of the Honduras asylum agency? What is its annual budget? How many employees does it have?

Answer 33: The Human Rights Management office within the National Migration Institute (INM) manages the process for making asylum determinations within the Government of Honduras. The officers make recommendations to the Commission for the Analysis, Revision, and Dictum on the Status of Refugees. The commission is composed of three members of the Ministry of Justice, Governance and Decentralization and three members of the INM. Additionally, two eligibility officers assist the human rights manager in the presentation of cases to the commission for adjudication. The INM Director signs the final approval to grant asylum. Pursuant to this question, the Department of State is seeking specific information regarding its budget.

Question 34: What is the name of the Honduras migration agency? What is its annual budget? How many employees does it have?

Answer 34: The National Migration Institute (INM) is the umbrella entity within the Government of Honduras covering migration issues. Pursuant to this question, the Department of State is seeking specific information regarding its budget and staffing but has not received a response at this time.

Question 35: To whom, when, and where does this agreement apply?

Answer 35: Guatemala and the United States signed an Asylum Cooperative Agreement on July 26, 2019. The Attorney General and the Secretary of Homeland Security determined that Guatemala's asylum system provides full and fair access to individuals seeking protection, as required by U.S. law, prior to the ACA entering into force on November 15, 2019. The first individual was sent to Guatemala under the agreement on November 21, 2019. While the ACA is a bilateral agreement between the United States and Guatemala, humanitarian assistance efforts funded by the Bureau of Population, Refugees, and Migration complement its implementation through partners like the United Nations High Commissioner for Refugees and the International Organization for Migration. The ACA with Guatemala helps address the humanitarian and security crisis at our southern border, while simultaneously fulfilling our mandate to provide protection and resolve the plight of persecuted and uprooted people.

Question 36: Given known violence and humanitarian concerns in Guatemala, how is this agreement consistent with our international obligations related to asylum seekers and refugees?

Answer 36: On November 15, the agreement the United States signed with Guatemala entered into force following certification by the Attorney General and the Secretary of Homeland Security pursuant to 8 U.S.C. § 1158(a)(2)(A) that individuals seeking asylum who are removed to Guatemala will have access to a full and fair procedure for determining their asylum claim or equivalent protection and following an exchange of diplomatic notes. Individuals who would be persecuted or tortured in Guatemala will not be sent to that country pursuant to this same statutory provision.

Question 37: Given the limitations of Guatemala's existing asylum system, how is the country equipped to process and adjudicate potentially thousands of asylum seekers?

Answer 37: The Department of State's Bureau of Population, Refugees, and Migration (PRM) provided more than \$26 million in humanitarian assistance funding for UNHCR to assist the government of Guatemala in scaling up its asylum capacities over the coming year.

Question 39: What is Guatemala's current capacity for the number of asylum claims it can process annually based on the resources currently budgeted for asylum claims?

Answer 39: Per the response to Question 30, due to the ongoing reorganization of ORMI, the State Department cannot yet provide an accurate estimation of Guatemala's asylum processing capacity at this time. The United States government is actively working with our partners and the Government of Guatemala to better understand its current capacities.

Question 40: In light of the agreement, what is the expected increase in the number of asylum claims in Guatemala, and what amount of additional resources will be required to handle such claims?

Answer 40: The United States and Guatemala have not yet finalized an implementation plan, which would include more details on how both governments plan to implement the ACA. In line with its own strategic priorities and the state-led Comprehensive Regional Protection and Solutions Framework (MIRPS), with humanitarian assistance funding from the Department, UNHCR will support the Guatemalan government to scale up its asylum capacity.

Question 42: Where will asylum seekers sent to Guatemala pursuant to this agreement be located in Guatemala?

Answer 42: The Asylum Cooperation Agreement (ACA) between the U.S. and Guatemala has not yet entered into force. The Department of State, in coordination with the Department of Homeland Security, is actively engaging with the Government of Guatemala to finalize detailed plans for implementation of the agreement.

Question 43: Do you assess that such asylum seekers will be subject to the same crime and insecurity plaguing Guatemala?

Answer 43: The Attorney General and the Secretary of Homeland Security must certify that these countries meet the requirements of 8 U.S.C. § 1158(a)(2)(A) prior to implementation, including that individuals cannot be removed to a country in which the individual would be persecuted or tortured for political reasons, and that the individual will have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection.

Question 44: Does this agreement [the Safe Third Country Agreement with Guatemala] require a rule or further bilateral documents to become effective?

Answer 44: Pursuant to the terms of the Asylum Cooperative Agreement (“ACA”) between the United States and Guatemala, the ACA will enter into force after the parties exchange notes indicating that each has complied with all necessary domestic legal procedures for the ACA to enter into force. As of the date of this hearing, this exchange has not yet occurred and accordingly the agreement has not entered into force. I defer to the Departments of Justice and Homeland Security regarding any need to modify existing regulations to provide for the U.S. implementation of this and any other ACAs that the United States enters into.

Question 45: Given that 8 U.S.C. § 1158(a)(2)(A) states that the designation of a safe third country requires the Attorney General to determine that the “the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection,” will the U.S. Attorney General issue findings regarding the fullness and fairness of Guatemala’s asylum system and, if so, when?

Answer 45: The Attorney General and the Secretary of Homeland Security must both determine that the Guatemalan refugee protection system satisfies the “access to full and fair procedure” requirements of 8 U.S.C. § 1158(a)(2)(A) before the Asylum Cooperative Agreement between the United States and Guatemala enters into force. I defer to the Departments of Justice and Homeland Security as to when they anticipate those determinations will be made.

Question 48: Given known violence and humanitarian concerns in Honduras, how is this agreement consistent with our international obligations related to asylum seekers and refugees?

Answer 48: I understand no individual can be sent to a country in which the individual would be persecuted or tortured. The Attorney General and the Secretary of Homeland Security must certify that Honduras meets the requirements of 8 U.S.C. § 1158(a)(2)(A) prior to implementation of the Asylum Cooperation Agreement, including that individuals will have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection.

Question 49: Given the limitations of Honduras’s existing asylum system, how is the country equipped to process and adjudicate potentially thousands of asylum seekers?

Answer 49: The Attorney General and the Secretary of Homeland Security must certify that a country meet the requirements of 8 U.S.C. § 1158(a)(2)(A) prior to implementation, including that individuals cannot be removed to a country in which the individual would be persecuted and that the individual will have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection.

Question 51: What is Honduras's current capacity for the number of asylum claims it can process annually based on the resources currently budgeted for asylum claims?

Answer 51: The Department is taking steps to consult with our international organization partners and the Government of Honduras in order to verify such information.

Question 52: In light of the agreement, what is the expected increase in the number of asylum claims in Honduras, and what amount of additional resources will be required to handle such claims?

Answer 52: The United States and Honduras have not yet finalized an implementation plan, which would include more details on how both governments plan to implement the ACA. It is expected that the U.S. government will begin working with the Government of Honduras to draft detailed plans for implementation of the agreement in the coming weeks.

Question 55: Do you assess that such asylum seekers will be subject to the same crime and insecurity plaguing Honduras?

Answer 55: The Attorney General and the Secretary of Homeland Security must certify that these countries meet the requirements of 8 U.S.C. § 1158(a)(2)(A) prior to implementation, including that individuals cannot be removed to a country in which the individual would be persecuted or tortured for political reasons, and that the individual will have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection.

Question 60: Given known violence and humanitarian concerns in El Salvador, how is this agreement consistent with our international obligations related to asylum seekers and refugees?

Answer 60: Under U.S. law, the ACA requires that DHS and DOJ certify that an asylum seeker has access to full and fair procedures for determining a claim to asylum or equivalent temporary protection in a third country, and that they would not face persecution or torture. We are prepared to work with El Salvador to strengthen its capacity to provide asylum to those who seek it. The Government of El Salvador remains ultimately responsible for addressing crime and insecurity in its country.

Question 61: Given the limitations of El Salvador's existing asylum system, how is the country equipped to process and adjudicate potentially thousands of asylum seekers?

Answer 61: The Attorney General and the Secretary of Homeland Security must certify that a country meet the requirements of 8 U.S.C. § 1158(a)(2)(A) prior to implementation, including that individuals cannot be removed to a country in which the individual would be persecuted and that the individual will have access to a full and fair procedure for determining a claim to asylum

or equivalent temporary protection. The United States and El Salvador have not yet finalized an implementation plan, which would include more details on how both governments plan to implement the ACA. We would welcome the opportunity to work with our international partners and the Government of El Salvador to strengthen the capacity of the asylum system.

Question 62: What is your understanding of the resources – financial and personnel – the Government of El Salvador budgets for processing asylum claims?

Answer 62: The Commission for Refugee Status (CODER) is responsible for refugee status determinations for the Salvadoran government and is staffed by employees of the Ministry of Foreign Affairs. CODER does not have its own budget. The Dirección General de Migración y Extranjería is the organization within the Government of El Salvador responsible for migration issues. Pursuant to this question, the Department of State is seeking specific information regarding its budget and staffing but has not received a response at this time.

Question 63: What is El Salvador's current capacity for the number of asylum claims it can process annually based on the resources currently budgeted for asylum claims?

Answer 63: The Department is taking steps to consult with our international organization partners and the Government of El Salvador in order to verify such information.

Question 64: In light of the agreement, what is the expected increase in the number of asylum claims in El Salvador, and what amount of additional resources will be required to handle such claims?

Answer 64: The United States and El Salvador have not yet finalized an implementation plan, which would include more details on how both governments plan to implement the ACA. It is expected that the U.S. government will work with the Government of El Salvador to draft detailed plans for implementation of the agreement.

Question 67: Do you assess that such asylum seekers will be subject to the same crime and insecurity plaguing El Salvador?

Answer 67: The Attorney General and the Secretary of Homeland Security must certify that these countries meet the requirements of 8 U.S.C. § 1158(a)(2)(A) prior to implementation, including that individuals cannot be removed to a country in which the individual would be persecuted or tortured for political reasons, and that the individual will have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection.

DOCUMENT 3: REVISED STATE DEPARTMENT RESPONSES
—SUBMITTED FEB. 14, 2020

From the SFRC Hearing “U.S. Policy in Mexico and Central America: Ensuring Effective Policies to Address the Crisis at the Border,” Assistant Secretary for International Narcotics and Law Enforcement Affairs Kirsten Madison and Acting Assistant Secretary for Western Hemisphere Affairs Michael Kozak, September 25, 2019

El Salvador: QFR info (DGME, CODER, staffing, budgets)

How many cases did El Salvador adjudicate in 2019?

- According to UNHCR, in 2019 four applications from previous years received refugee recognition and 17 cases from previous years were closed. No new cases submitted in 2019 were adjudicated in 2019.

What is El Salvador's asylum capacity?

- El Salvador currently has no full-time staff dedicated to the asylum system, and one part-time caseworker. Based on the current capacity and previous decisions, UNHCR estimates El Salvador can adjudicate five cases per year with its current personnel and resources.
- CODER (Comisión para la Determinación de la Condición de Persona Refugiada, in Spanish) received 415 asylum applications between 2002 and mid-March 2020. They recognized 102, denied 18, found 74 inadmissible, 151 were withdrawn, and 11 were closed without being resolved. 59 are currently pending.
- The Embassy asked but was unable to obtain a capacity estimate from the government.

Does the government itself provide any training for asylum officers in El Salvador?

- UNHCR is working with the government to provide trainings for asylum officers.

How many employees does DGME have?

- The Embassy was unable to get an answer to this question.

CODER Budget

- CODER does not have its own budget.

Coder Structure – Roles and Responsibilities:

- **Secretariat:** The CODER Secretariat, consists of the Ministry of Foreign Affairs (MFA) Director of Legal Affairs and a legal affairs office employee. Both have a variety of other job duties and only work on CODER functions part-time. The Secretariat is responsible for collecting forms and documentation, notifying other

agencies of applicants' need for services as appropriate, providing identification (initially in the form of a certificate stating they are applying for asylum), and doing advocacy and outreach. If a case is deemed admissible, it moves on to asylum adjudication. The Secretariat researches and discusses the cases that have been deemed admissible, providing information to the Subcommission.

- **Subcommission:** CODER has a four-member Subcommission with two part-time staff from the MFA (the MFA Director of Human Rights and MFA Director of Humanitarian Affairs) and two part-time staff from the DGME (Director General of Migration and Immigration) and the Department of Justice and Public Safety (DJPS) Legal Director). The Subcommission uses the information provided by the Secretariat, interviews asylum applicants, and makes a recommendation to the Commission for final decisions.
- **Commission:** The Commission, which makes final decisions, consists of the Minister of Foreign Affairs and the Minister of Justice and Public Safety; the Minister of Foreign Affairs is the presiding official. Appeals are also decided by the Commission, both for admissibility and final asylum decisions.

Asylum Process:

This is how the DGME describes the asylum process:

- Applicant at any land/sea/air port of entry places a claim before the DGME officer.
- DGME Officer notifies CODER.
- CODER has 72 hours to appear at the border and interview the applicant to determine eligibility.
- If the applicant does not have a place to stay in El Salvador, DGME assists in providing shelter at the La Chacra shelter. (PRM note: This is a government-run shelter, primarily for foreign migrants and people without documentation. End note.)
- CODER has 15 days to issue a preliminary determination on the claim.
- The applicant is issued a temporary identification document valid for 30 days until a final decision is made.

This is how CODER describes the asylum process:

- Applications received at the border are interviewed by the Subcommission within 72 hours to decide initial admissibility.
- Applicants already inside the country have five days from their arrival to apply for asylum with CODER in San Salvador, though this can be waived with an explanation. They are interviewed by the Subcommission within 20 days to decide initial admissibility.
- Civil society organizations provide shelter, food, legal advice, and may accompany applicants to interviews.
- UNHCR notes that there is a 30-day deadline for the initial review and a three-month period for final adjudication. However, these deadlines are not often met.

Guatemala:**Confirm ORMI's (Oficina de Relaciones Migratorias Internacionales) budget (13k annual)**

- Yes, the \$13,000 budget is annual. However, administrative costs, like salaries, come out of a different pool of money.

Does the VP himself need to sign off on all asylum claims? Or just someone from his office?

- The National Migration Authority (Autoridad Migratoria Nacional or ANM) is composed of the heads of seven governmental institutions: the Ministry of Foreign Affairs, the Ministry of Social Development, the Ministry of Labor and Social Security, the Ministry of Government, the Guatemalan Migration Institute (IGM), the Council for Guatemalan Migrants, and the Vice President. The ANM makes the final decision on refugee status determination (RSD), based on Guatemala's National Commission for Refugees' (CONARE) recommendations. Decisions need to be signed by all seven representatives of the ANM, including the Vice President.

How much of the IGM's budget goes to asylum function?

- The Department was unable to obtain an answer as salaries, building costs, etc. are not broken down for ORMI.

Is the IGM is under Gobernacion?

- Yes, until August 2020.

Confirm understanding that it isn't just one asylum agency, but three different entities that all work on asylum - CONARE, AMN, and ORMI.

- The three institutions are one on top of the other, hierarchically, with CONARE above AMN, which in turn sits above ORMI as part of a single RSD system. Their individual roles are explained below:
- Asylum applications can be presented at border control stations, as well as at the Office for the Assistance and Protection of the Fundamental Rights of Migrants (Subdireccion de Atencion y Proteccion de Derechos Fundamentales de los Migrantes), a unit of the IGM located in Guatemala City. This new office will take over from the ORMI, which was mandated with the same task by a preceding law.
- Asylum-seekers should be interviewed by ORMI in Guatemala City within 15 days of their application. In practice, the time varies greatly and under the current COVID-19 context, it is ranging from 6 to 10 weeks.
- The ORMI/Office for Assistance and Protection transfers all asylum applications and their recommendations as to whether to recognize the asylum-seeker, based on their interview, to the CONARE. The CONARE is composed of three Ministries (Governance, Labor and Foreign Affairs) and the IGM. CONARE issues a positive or negative recommendation on the cases before them.
- The CONARE should send their recommendation on the cases considered to the

ANM within 30 days of their meeting.

- The ANM is composed of the heads of seven governmental institutions: four Ministries, the IGM, the Council for Guatemalan Migrants and the Vice President. The ANM makes the final decision on RSD, based on the CONARE's recommendations. Decisions need to be signed by all seven representatives of the ANM within 30 days of their meeting.
- The CONARE then notifies the asylum-seeker of the outcome of his/her application. If CONARE issues a negative decision, the applicant has 10 working days to file an appeal/reconsideration to the ANM. ANM has five days to decide on the appeal.

How many asylum claims were presented to the Guatemalan asylums system in 2019?

- In 2019 Guatemala received 495 applications. In 2019, a total of 47 cases were decided on their merits, with 26 cases recognized and 21 cases denied. 65 cases were closed for other reasons.

Of the 31 people UNHCR has helped access the Guatemalan asylum system, how many cases have been adjudicated?

- UNHCR has helped 31 cases access the Guatemalan asylum system, but none have been adjudicated. UNHCR is coordinating with the Ministry of Labor to support all refugees and asylum-seekers who have not been able to renew or apply for work permits during the pandemic. Two individuals have received their work authorization.

Process:

- Applications may be submitted verbally or in writing to:
 - the Direccion General de Migracion (DGM)
 - Border posts (land, air, sea)
 - Policia Nacional Civil (PNC)
- If the application is made at a border post with the DGM, the individual will receive a temporary document. The document has to be renewed every ten days.
- Within ten days, the DGME will inform individual of interview date.
- After the interview, the case is referred to the CONARE, which will review, issue, and inform individuals of the decision.
- If individuals are approved, the DGME will issue a new document recognizing the individuals as refugees.
- Individuals whose applications are denied can appeal to CONARE within five days.
- Appeals are decided by the General Secretariat of the Presidencia de la Republica

Honduras:**What is the INM's (National Migration Institute) annual budget?**

- The Department was unable to confirm this information.

How many employees does the INM have?

- There are about 422 employees in INM's "operations area."

Is the INM an independent entity in Honduras?

- The INM is a decentralized entity of the Secretaries of State in the Offices of Governance, Justice and Decentralization with its own legal status and independence in the administrative, labor, functional and financial areas.

What CIRADR (Internal Commission for the Review, Analysis, and Opinion of Refugee Applications) Budget:

- The CIRADR does not have a separate, legally established budget apart from INM.
- CIRADR does not have full-time employees dedicated to refugee issues.

Process:

- The applications must be submitted to INM, which will forward the applications to the central office for resolution.
- Once it has arrived at the main office, the application will be remitted to the Gerencia de Derechos Humanos y Atencion al Migrante to open the file.
- The Gerencia de Derechos Humanos y Atencion al Migrante passes the file on to the Secretary General to put it in the system, assign a number to the file, and issue the authorization of a provisional document that allows the applicant to stay in the country temporarily while the request is being processed. This document serves as identification and it is not an authorization to work in the country.
- The Gerencia de Derechos Humanos y Atencion al Migrante fills out the evaluation form of the case that has the analysis of either inclusion or exclusion, and this is submitted to the CIRADR, which is made up of: the Secretariat of Human Rights; Secretariat of Justice, Government, and Decentralization; National Migration Institute; UNHCR (in an observation capacity); Center for the Promotion and Defense of Human Rights (CIPRODEH); and the Forum for Migration in Honduras (FONAMIH).
- The CIRADR reviews and analyzes the evaluation form filled out by the Gerencia de Derechos Humanos y Atencion al Migrante. CIRADR then provides the corresponding opinion, which is signed by its six members.
- The CIRADR drafts an opinion about the decision, which is signed and then submitted to the General Secretary of INM.
- The INM Secretary General makes the final decision and INM informs individuals of the decision.

- Once an applicant is notified of the positive resolution, the applicant then must get the resolution and pay for its certification. The applicant must then register in the foreign residents registry, which requires another payment, and then they must bring the certification and proof of registration to INM which will then provide the ID card to the refugee.
- The appeal procedure is not clearly demarcated by law, though the Honduran government reports there is an administrative recourse.
- The government has also given complementary protection for humanitarian reasons to applicants.

Does the Gerencia de Derechos Humanos y Atencion al Migrante have any full time staff? What is the Gerencia's budget?

- 17 staff members support Gerencia, though none are full time.
- The personnel assigned to the Human Rights and Migrant Care Agency have various responsibilities, one of which is processing and analyzing the applications of requests for refugee status.
- The annual budget is approximately USD \$220,000. The budget covers the Protection Program of the Human Rights of Migrants and includes the wages and salaries of the personnel assigned to the Agency.

Numbers:

- Since 2014, INM has granted refugee status to 76 people, of whom 56 are still living in Honduras.
- INM received 110 applications for refugee status in 2019. INM approved 46 applications for refugee status, and denied 0 applications in 2019.
- As of March 13, 2020, the INM had received 41 applications for refugee status in 2020. None have been approved or denied.
- INM has a backlog of 124 cases.

DOCUMENT 4: REVISED STATE DEPARTMENT RESPONSES
—SUBMITTED JULY 9, 2020

From the SFRC Hearing “U.S. Policy in Mexico and Central America: Ensuring Effective Policies to Address the Crisis at the Border,” Assistant Secretary for International Narcotics and Law Enforcement Affairs Kirsten Madison and Acting Assistant Secretary for Western Hemisphere Affairs Michael Kozak, September 25, 2019

Question 7: Please provide a list of all agreements, instruments, and arrangements, binding or non-binding; annexes; appendices; implementation plans, guidance and other related documents that the Trump Administration has signed, agreed to, or otherwise joined with Mexico and the Central American governments so that we can finally get a clear picture of what this Administration is doing in the name of the American people? Please ensure that the list includes agreements signed by the Department of Homeland Security, Department of Justice, Department of Defense, and all of their respective agencies and instrumentalities. Please ensure that the list includes the title of the agreement; the date it was signed; the entities and officials that signed it; and whether the agreement includes any supplemental agreements, annexes or implementation plans (or other supporting documents).

Answer 7: The Department has provided all relevant agreements under the Case-Zablocki Act and will continue to transmit agreements consistent with the requirements of the Act moving forward. This includes the Joint Declaration and Supplementary Agreement the Department transmitted to the Congress pursuant to the Case Act on August 6, 2019, which is attached.

Question 9: What agreements has the United States Government signed with the Government of El Salvador since January 1, 2017. As the State Department is the lead agency on U.S. diplomacy with foreign governments, please ensure that the list includes agreements signed by the Department of Homeland Security, Department of Justice, Department of Defense, and all of their respective agencies and instrumentalities. Please ensure that the list includes the title of the agreement; the date it was signed; the entities and officials that signed it; and whether the agreement includes any supplemental agreements, annexes or implementation plans (or other supporting documents). Please provide a copy of all of these agreements, supplemental agreements, annexes, and implementation plans.

Answer 9: The Asylum Cooperation Agreement with El Salvador is attached.

Question 10: What agreements has the United States Government signed with the Government of Guatemala since January 1, 2017. As the State Department is the lead agency on U.S. diplomacy with foreign governments, please ensure that the list includes agreements signed by the Department of Homeland Security, Department of Justice, Department of Defense, and all of their respective agencies and instrumentalities. Please ensure that the list includes the title of the agreement; the date it was signed; the entities and officials that signed it; and whether the agreement includes any supplemental agreements, annexes or implementation plans (or other supporting documents). Please provide a copy of all of these agreements, supplemental agreements, annexes, and implementation plans.

Answer 10: The Asylum Cooperation Agreement with Guatemala entered into force on November 15, 2019. The Asylum Cooperation Agreement with Guatemala is attached.

Question 11: What agreements has the United States Government signed with the Government of Honduras since January 1, 2017. As the State Department is the lead agency on U.S. diplomacy with foreign governments, please ensure that the list includes agreements signed by the Department of Homeland Security, Department of Justice, Department of Defense, and all of their respective agencies and instrumentalities. Please ensure that the list includes the title of the agreement; the date it was signed; the entities and officials that signed it; and whether the agreement includes any supplemental agreements, annexes or implementation plans (or other supporting documents). Please provide a copy of all of these agreements, supplemental agreements, annexes, and implementation plans.

Answer 11: The Asylum Cooperation Agreement with Honduras is attached.

Question 18: What specific steps does the United States want Guatemala to take prior to obligating new U.S. foreign assistance for Guatemala? Has Guatemala taken any such steps? What is the potential timeline for reinstating U.S. foreign assistance to Guatemala?

Answer 18: In October 2019, following demonstrated progress by the Government of Guatemala in addressing irregular migration, the President and the Secretary of State announced the Department's intention to move forward with certain foreign assistance programs. On November 8, 2019, the Department informed Congress of details regarding targeted U.S. foreign assistance funding for El Salvador, Guatemala, and Honduras. The Administration is moving forward with \$143 million in programs for El Salvador, Guatemala, and Honduras, which will support, through implementing partners, those governments' efforts to address issues of forced displacement and irregular migration in the region. Of the \$143 million, approximately \$29.5 million will be for Guatemala, and an additional \$7 million will be dedicated to regional programming. Also, nearly \$39 million was provided in FY 2019 for programming in Guatemala, including support for asylum capacity building, direct humanitarian assistance, and assisted voluntary return activities. Consistent with the President's policy, the Department and USAID are in the process of determining what additional assistance may necessary to support continued progress on decreasing irregular outward migration. We remain optimistic that these governments will take additional actions to further address irregular migration from their countries. The Department and USAID will notify Congress through established procedures of any intent to obligate additional funding for programming in Guatemala.

Question 22: What specific steps does the United States want Honduras to take prior to obligating new U.S. foreign assistance for Honduras? Has Honduras taken any such steps? What is the potential timeline for reinstating U.S. foreign assistance to Honduras?

Answer 22: In October 2019, following demonstrated progress by the Government of Honduras in addressing irregular migration, the President and the Secretary of State announced the

Department's intention to move forward with certain foreign assistance programs. On November 8, 2019, the Department informed Congress of details regarding targeted U.S. foreign assistance funding for El Salvador, Guatemala, and Honduras. The Administration is moving forward with \$143 million in programs for El Salvador, Guatemala, and Honduras, which will support, through implementing partners, those governments' efforts to address issues of forced displacement and irregular migration in the region. Of the \$143 million, approximately \$55.7 million will be for Honduras, and an additional \$7 million will be dedicated to regional programming. Consistent with the President's policy, the Department and USAID are in the process of determining what additional assistance may be necessary to support continued progress on decreasing irregular outward migration. We remain optimistic that these governments will take additional actions to further address irregular migration from their countries. The Department and USAID will notify Congress through established procedures of any intent to obligate additional funding for programming in Honduras.

Question 24: The Department of Homeland Security recently signed asylum related agreements with the Governments of El Salvador, Guatemala, and Honduras. Did DHS inform the State Department of its intention to sign these agreements, prior to signing them? If so, when?

Answer 24: Yes. The Department of Homeland Security notified the Department of State it would like to enter into Asylum Cooperative Agreements with the Governments of El Salvador, Guatemala, and Honduras before it pursued formal negotiations. DHS and State worked in tandem during Asylum Cooperative Agreement negotiations with El Salvador, Guatemala, and Honduras.

Guatemala:

- DHS requested authority to negotiate the ACA, which the Department granted on 06/05/2019.
- On 08/08/2019, the Department authorized DHS to sign the ACA.

Honduras:

- DHS requested authority to negotiate the ACA, which the Department granted on 08/14/2019
- On 9/24/2019, the Department authorized DHS to sign the ACA.

El Salvador:

- DHS requested authority to negotiate the ACA, which the Department granted on 08/14/2019.
- On 9/20/2019, the Department authorized DHS to sign the ACA.

Question 25: Did the State Department provide any assessments or evaluations to DHS regarding the capacity of the Salvadoran, Guatemalan, and Honduras migration and asylum systems prior to DHS signing the agreements? If so, what was the content of these assessments or evaluations? How and by who were such assessments and evaluations transmitted to DHS?

Answer 25: DHS did not request the State Department to provide assessments or evaluations of the capacities of the Salvadoran, Guatemalan, and Honduran migration and asylum systems prior

to DHS signing the agreements. U.S. Embassies reported via cable to Washington on country capacities and constraints.

Question 26: Does the State Department currently assess that the Government of El Salvador has the capacity to receive by asylum seekers that reached the U.S. border? If so, how many asylum seekers does the State Department assess that the Government of El Salvador is capable of receiving back on a monthly basis?

Answer 26: The Attorney General and the Secretary of Homeland Security must certify that these countries meet the requirements of 8 U.S.C. § 1158(a)(2)(A) prior to implementation, including that individuals cannot be removed to a country in which the individual would be persecuted and that the individual will have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection. We are aware the government of El Salvador hosted a total of 66 asylum seekers and refugees in 2018. Of those, 31 were new asylum cases; 28 were granted refugee status and 3 were denied. The Salvadoran Commission for the Recognition of Refugee Status (CODER) is required by domestic law to complete processing in three months, although there have sometimes been delays due to staffing constraints that result in processing times as long as eight months. Separately, but complementary to the ACA, in 2020, in support of El Salvador's goal to bolster its protection capacity under the Comprehensive Regional Protection and Solutions Framework (MIRPS, for its acronym in Spanish), international humanitarian organizations, with PRM contributions, will work to increase the capacity and efficiency of El Salvador's asylum system as well as humanitarian assistance for and integration of IDPs, asylum seekers, refugees, and stateless persons.

Question 27: What is the name of the Salvadoran asylum agency? What is its annual budget? How many employees does it have?

Answer 27: The Commission for the Recognition of Refugee Status (CODER) is responsible for refugee status determinations for the Salvadoran government and is staffed by employees of the Ministry of Foreign Affairs. CODER falls under the Ministry of Foreign Affairs and does not have its own budget. CODER and the Ministry of Foreign Affairs provides final approval on asylum applications.

Question 28: What is the name of the Salvadoran migration agency? What is its annual budget? How many employees does it have?

Answer 28: The Dirección General de Migración y Extranjería is the organization within the Government of El Salvador responsible for migration issues. Pursuant to this question, the Department of State is seeking specific information regarding its budget and staffing but has not received a response at this time.

Question 29: Does the State Department currently assess that the Government of Guatemala has the capacity to receive by asylum seekers that reached the U.S. border? If so, how many asylum

seekers does the State Department assess that the Government of Guatemala is capable of receiving back on a monthly basis?

Answer 29: The Morales administration stated a capacity to process up to 135 ACA transferees a day at the airport reception center. In practice, far fewer have been transferred. Furthermore, in practice, the government has not provided assistance beyond legal status to transferees and has relied on international humanitarian organizations to provide shelter, transportation, and protection counseling, and assisted voluntary return, in line with their humanitarian mandates. The Department has been encouraging the new government to more fulsomely support transferees. The Department has assessed that current shelter and processing capacity for ACA transferees through international organizations is 50 people per night. Separately but complementary to the ACA, in support of the government of Guatemala's commitments under MIRPS, the government continues to work with international humanitarian organizations to bolster its capacity to provide protection, humanitarian assistance, and integration.

Question 30: What is the name of the Guatemalan asylum agency? What is its annual budget? How many employees does it have?

Answer 30: The National Commission for Refugees (CONARE) is the Guatemalan agency responsible for asylum issues. It has four participating officials (one from the National Migration Institute [IGM], and one from each of the Ministries of Government, Labor and Social Development, and Foreign Affairs). Currently none of these officials is dedicated to CONARE full-time. CONARE meets to review asylum petitions and submit recommendations to the National Migration Authority (AMN) for final decision. The Office of International Migration Relations (ORMI) has seven full-time employees (three caseworkers, three investigators seconded to CONARE, and one supervisor). They conduct investigations in support of CONARE recommendations. Separately but complementary to ACA, with funding from State/PRM, international humanitarian organizations are assisting the government of Guatemala in scaling up its asylum capacity, humanitarian assistance, and integration response, over the coming year through MIRPS.

Question 31: What is the name of the Guatemalan migration agency? What is its annual budget? How many employees does it have?

Answer 31: The Government of Guatemala is currently in a process of institutional reform aimed at strengthening its migration management capabilities. Under its new pending Migration Authority Agreement (an intra-Guatemala instrument), the National Migration Authority (AMN), including the National Migration Institute (IGM), was scheduled to move out of the Ministry of Government in August 2019 to become a "decentralized entity." The AMN is composed of representatives from seven governmental institutions: four ministries, the IGM, the Council for Guatemalan Migrants, and the Office of the Vice-President as the head. It does not have its own budgeted staff. The budget for the newly decentralized AMN was still under negotiation as of October 2019.

Question 32: Does the State Department currently assess that the Government of Honduras has the capacity to receive asylum seekers that reached the U.S. border? If so, how many asylum seekers does the State Department assess that the Government of Honduras is capable of receiving back on a monthly basis?

Answer 32: The Attorney General and the Secretary of Homeland Security must certify that a country meets the requirements of 8 U.S.C. § 1158(a)(2)(A) prior to implementation, including that individuals cannot be removed to a country in which the individual would be persecuted and that the individual will have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection. The Honduran government has indicated a capacity to process and shelter up to twelve ACA transferees every eight days in the initial phase, using its existing resources. The government has also signaled a willingness to expand that capacity. Separately and complementary to ACA, with funding from State/PRM, international humanitarian organizations are assisting the government of Honduras in scaling up its asylum capacity, better address the needs of IDPs, and providing humanitarian assistance over the coming year through MIRPS.

Question 33: What is the name of the Honduras asylum agency? What is its annual budget? How many employees does it have?

Answer 33: The Human Rights Management office within the National Migration Institute (INM) manages the process for making asylum recommendations within the Government of Honduras. The officers conduct research and submit case files to the Commission for the Analysis, Revision, and Dictum on the Status of Refugees. The commission is composed of three members of the Ministry of Justice, Governance and Decentralization and three members of the INM. Additionally, two eligibility officers assist the human rights manager in the presentation of cases to the commission for recommendation. The Commission submits cases with an accompanying recommendation to the INM General Secretariat for final approval to grant asylum. Pursuant to this question, the Department of State is seeking specific information regarding its budget.

Question 34: What is the name of the Honduras migration agency? What is its annual budget? How many employees does it have?

Answer 34: The National Migration Institute (INM) is the umbrella entity within the Government of Honduras covering migration issues. Pursuant to this question, the Department of State is seeking specific information regarding its budget and staffing but has not received a response at this time.

Question 40: In light of the agreement, what is the expected increase in the number of asylum claims in Guatemala, and what amount of additional resources will be required to handle such claims?

Answer 40: The United States and Guatemala have not yet finalized an implementation plan, which will include more details on how both governments plan to implement the ACA. As of January 21, ICE reports that there have been 235 Honduran and Salvadoran nationals transferred to Guatemala under the Asylum Cooperative Agreement (ACA). The first flight was on November 21, 2019. Of the 235, 144 were Honduran nationals and 91 were Salvadoran nationals. While the Department is unable to assess the extent to which the number of asylum claims in Guatemala will increase under the ACA in the future, the increase thus far has been small. As of January 21, only two ACA transferees are pursuing asylum claims in Guatemala. Separately but complementary to the ACA, in line with its own strategic priorities and the state-led MIRPS framework, with humanitarian assistance funding from State/PRM, international humanitarian organizations are supporting the Guatemalan government scale up its asylum capacity, humanitarian assistance, and integration.

Question 42: Where will asylum seekers sent to Guatemala pursuant to this agreement be located in Guatemala?

Answer 42: Individuals are transferred to Guatemala City.

Question 43: Do you assess that such asylum seekers will be subject to the same crime and insecurity plaguing Guatemala?

Answer 43: The Government of Guatemala has the ultimate responsibility for addressing generalized crime and insecurity in Guatemala. In the absence of the government fully providing protection, international humanitarian organizations have provided humanitarian assistance and a level of protection, counseling and monitoring in Guatemala, including shelter and legal counseling.

Question 47: To whom, when, and where does this agreement apply?

Answer 47: The United States and Honduras signed an Asylum Cooperative Agreement on September 25, 2019. When it enters into force, the agreement will allow the United States to transfer third country nationals who wish to seek asylum or other forms of protection to Honduras to access the Honduran government's protection system. The agreement has not yet entered into force and is pending DHS and DOJ full and fair determination and a final Joint Implementation Plan and annexes, which are required for this agreement.

Question 49: Given the limitations of Honduras's existing asylum system, how is the country equipped to process and adjudicate potentially thousands of asylum seekers?

Answer 49: The Honduran government has committed to expanding its asylum system through the ACA. The Honduran government is also in communication with DHS and State regarding its current reception capacity to ensure that the number of transfers are appropriately calibrated.

Separate and complementary to the ACA, the Honduran government made commitments to expand protection, humanitarian assistance, integration, and its asylum system through the MIRPS. International humanitarian partners are prepared to assist the government fulfill this its commitments under MIRPS. Government discussions with humanitarian organizations are ongoing about the best way to do so.

Question 51: What is Honduras's current capacity for the number of asylum claims it can process annually based on the resources currently budgeted for asylum claims?

Answer 51: According to the National Migration Institute, Honduras typically processes 30-40 cases per year. In 2018, Honduras received 84 new asylum applications.

Question 61: Given the limitations of El Salvador's existing asylum system, how is the country equipped to process and adjudicate potentially thousands of asylum seekers?

Answer 61: The United States and El Salvador have not yet finalized an implementation plan, which would include more details on how both governments plan to implement the ACA. The Department will work with the Government of El Salvador and DHS to calibrate the number of transferees with El Salvador's capacity. Separate and complementary to the ACA, the government of El Salvador government made commitments to expand protection, humanitarian assistance, integration, and its asylum system through the MIRPS. International humanitarian partners are prepared to assist the government fulfill this its commitments under MIRPS. Government discussions with humanitarian organizations are ongoing about the best way to do so.

ANNEX 5

Correspondence Between U.S. Senators and the Trump Administration

DOCUMENT 1: LETTER FROM SEN. MENENDEZ,
WARREN, ET AL. TO STATE DEPT. AND DHS

United States Senate
WASHINGTON, DC 20510

February 5, 2020

The Honorable Michael R. Pompeo
Secretary of State
U.S. Department of State
2201 C Street, NW
Washington, DC 20037

The Honorable William P. Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

The Honorable Chad F. Wolf
Acting Secretary of Homeland Security
U.S. Department of Homeland Security
3801 Nebraska Avenue, NW
Washington, DC 20528

Dear Secretary Pompeo, Attorney General Barr, and Acting Secretary Wolf:

We write regarding the “asylum cooperative agreements”¹ (ACAs) that the Department of Homeland Security (DHS) has signed in recent months with Guatemala,² El Salvador,³ and Honduras,⁴ countries collectively referred to as the “Northern Triangle.” These agreements outline a framework that could enable the United States to expel asylum seekers to each of these countries, regardless of where the migrants are from or which countries they have transited en

¹ Sometimes referred to as “safe third country agreements.” U.S. Executive Office for Immigration Review and U.S. Citizenship and Immigration Services, Federal Register Notice, “Implementing Bilateral and Multilateral Asylum Cooperative Agreements Under the Immigration and Nationality Act,” effective November 19, 2019, <https://www.govinfo.gov/content/pkg/FR-2019-11-19/pdf/2019-25137.pdf>.

² U.S. Department of Homeland Security, “Agreement between the Government of the United States and the Government of the Republic of Guatemala on Cooperation Regarding the Examination of Protection Claims,” signed July 26, 2019, <https://www.documentcloud.org/documents/6232982-Signed-Agreement-English.html#document/p1>.

³ U.S. Department of Homeland Security, “Agreement between the Government of the United States and the Government of the Republic of El Salvador for Cooperation in the Examination of Protection Claims,” signed September 20, 2019, <https://www.documentcloud.org/documents/6427712-US-El-Salvador-Cooperative-Agreement.html>.

⁴ U.S. Department of Homeland Security, “Agreement between the Government of the United States and the Government of the Republic of Honduras for Cooperation in the Examination of Protection Claims,” signed September 25, 2019, <https://ca-times.brightspotcdn.com/47/a5/85ea59444cb89bb2f3eca15880f3/us-honduras-asylum-cooperative-agreement.pdf>.

route to the United States.⁵ The Trump Administration's approach to asylum seekers is not only inhumane and potentially illegal; it could also overwhelm the asylum systems of Guatemala, El Salvador, and Honduras and further destabilize those countries. As such, these agreements could have serious and detrimental implications for U.S. national security.

There is significant evidence that the Northern Triangle countries are unlikely to provide safety or adequate protection for asylum seekers, both because of the pervasive violent crime and targeted persecution there as well as their governments' weak or practically non-existent asylum capacities. We are also concerned that expelling asylum seekers under this framework raises serious legal and procedural questions, including the degree to which the Administration complied with relevant law in producing and signing these agreements.

As you know, the Northern Triangle countries have some of the highest homicide rates in the world and are experiencing massive forced displacement both internally and across borders.^{6,7,8} The Department of State's own human rights reports for these countries describe the dangers of rape, femicide, forced child labor, and threats against the LGBTQ community.⁹ Gang violence is pervasive and often transcends borders; some of these criminal organizations are so dangerous that even some police forces trained to combat gang violence are themselves fleeing to the United States.¹⁰ Despite these troubling facts, on November 21, 2019, the Administration expelled a Honduran man to Guatemala in the first transfer under these agreements.¹¹

The Administration has since expelled more than 250 migrants from Honduras and El Salvador to Guatemala.¹² At first, the Administration said it would transfer only single adults.¹³ However,

⁵ The agreements do not allow for returning an asylum seeker to the country of their own nationality. But they allow, for example, for a Honduran or a Cameroonian asylum seeker to be deported to Guatemala. U.S. Executive Office for Immigration Review and U.S. Citizenship and Immigration Services, Federal Register Notice, "Implementing Bilateral and Multilateral Asylum Cooperative Agreements Under the Immigration and Nationality Act," effective November 19, 2019, <https://www.govinfo.gov/content/pkg/FR-2019-11-19/pdf/2019-25137.pdf>.

⁶ United Nations Office on Drugs and Crime, "Global Study on Homicide 2019," July 2019, <https://www.unodc.org/unodc/en/data-and-analysis/global-study-on-homicide.html>.

⁷ United Nations High Commissioner for Refugees, "Global Trends: Forced Displacement in 2018," June 20, 2019, p. 48, <https://www.unhcr.org/en-us/statistics/unhcrstats/5d08d7ce7/unhcr-global-trends-2018.html>. (In 2018, over 282,000 people from the Northern Triangle countries had asylum applications pending adjudication worldwide.)

⁸ Internal Displacement Monitoring Centre, "Painting the Full Picture: Persistent data gaps on internal displacement associated with violence in El Salvador, Guatemala and Honduras," November 2019, pp. 10-15, <http://www.internal-displacement.org/publications/painting-the-full-picture-displacement-data-gaps-in-the-nitca>.

⁹ U.S. Department of State, "Country Reports on Human Rights Practices for 2018: El Salvador, Guatemala, Honduras," 2018, <https://www.state.gov/report/custom/420abb692c/>.

¹⁰ Washington Post, "It's so dangerous to police MS-13 in El Salvador that officers are fleeing the country," Kevin Sieff, March 3, 2019, https://www.washingtonpost.com/world/the_americas/its-so-dangerous-to-police-ms-13-in-el-salvador-that-officers-are-fleeing-the-country/2019/03/03/e897dbaa-2287-11e9-b5b4-1d18dfb7b084_story.html

¹¹ Reuters, "Shifting asylum 'burden': U.S. sends Guatemala first Honduran migrant," Sofia Menchu, November 21, 2019, <https://www.reuters.com/article/us-usa-immigration-guatemala/shifting-asylum-burden-us-sends-guatemala-first-honduran-migrant-idUSKBN1XV1WM>.

¹² The Intercept, "One year into 'Remain in Mexico,' the U.S. is enlisting Central America in its crackdown on asylum," Sandra Cuffe, January 29, 2020, <https://theintercept.com/2020/01/29/remain-in-mexico-year-anniversary-central-america/>.

¹³ LA Times, "In a first, U.S. starts pushing Central American families seeking asylum to Guatemala," Molly O'Toole, December 10, 2019, <https://www.latimes.com/politics/story/2019-12-10/u-s-starts-pushing-asylum-seeking-families-back-to-guatemala-for-first-time>.

the Administration has begun to transfer children and families, including a Honduran mother with two children who had been hospitalized.¹⁴ Reportedly, many of these migrants are not even aware in advance of the country to which they are being transferred. Upon arrival, they are told that they have 72 hours to either apply for asylum or leave, but are reportedly given practically no information about the process.¹⁵

Because of the lack of protection offered in Guatemala, El Salvador and Honduras, these agreements raise serious legal questions. On November 18, 2019, the Department of Justice and DHS released an interim final rule ("Rule") amending departmental regulations in order to implement the ACAs.¹⁶ The Rule, effective November 19, 2019, characterizes the ACAs as "safe third country" agreements as described in the Immigration and Nationality Act, which provides that asylum seekers may be removed under the following conditions:

"[I]f the Attorney General determines that the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien's nationality or, in the case of an alien having no nationality, the country of the alien's last habitual residence) in which the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have **access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection**, unless the Attorney General finds that it is in the public interest for the alien to receive asylum in the United States."¹⁷

The Rule provides that the Attorney General and the Secretary of Homeland Security will make "categorical" determinations as to whether the Northern Triangle countries offer access to a "full and fair procedure" for determining asylum claims. Written information provided to our offices by the Administration indicates that "[t]he Attorney General and Secretary of Homeland Security determined that Guatemala's asylum system provides full and fair access to individuals seeking protection, as required by U.S. law, prior to the ACA entering into force on November 15."¹⁸

The notion that Guatemala or the other two Northern Triangle countries offers such a procedure strains credibility—their systems for determining asylum claims are, at best, deeply flawed and under-resourced, and at worst, practically non-existent. According to the State Department's human rights reports, in Guatemala, "identification and referral mechanisms for potential asylum seekers were inadequate... [and] migration and police authorities lacked adequate training

¹⁴ Associated Press, "Advocates: Honduran mother, children deported to Guatemala," Nomaan Merchant, January 21, 2020, <https://apnews.com/583a7d10644f407e8035e5b6edd1c8f7>.

¹⁵ Washington Post, "The U.S. is putting asylum seekers on planes to Guatemala — often without telling them where they're going," Kevin Sieff, January 14, 2020, https://www.washingtonpost.com/world/the_americas/the-us-is-putting-asylum-seekers-on-planes-to-guatemala-often-without-telling-them-where-theyre-going/2020/01/13/0f89a93a-3576-11ea-a1ff-c48c1d59a4a1_story.html.

¹⁶ U.S. Executive Office for Immigration Review and U.S. Citizenship and Immigration Services, Federal Register Notice, "Implementing Bilateral and Multilateral Asylum Cooperative Agreements Under the Immigration and Nationality Act," effective November 19, 2019, <https://www.govinfo.gov/content/pkg/FR-2019-11-19/pdf/2019-25137.pdf>.

¹⁷ 8 USC § 1158(a)(2)(A). Emphasis added.

¹⁸ U.S. Department of State, Answer to Question for the Record to Deputy Secretary of State Nominee Stephen Biegun by Senator Bob Menendez (#235), Submitted November 20, 2019.

concerning the rules for establishing refugee status.¹⁹ Guatemala does not have a dedicated office for resolving asylum cases; instead, a commission of four officials from several ministries and the immigration department meet a few times a year to decide cases.²⁰ Reportedly, these officials did not resolve a single case in the first seven months of 2019.²¹ Honduras and El Salvador do not have a single full-time asylum officer. By contrast, U.S. Citizenship and Immigration Services has about 500 asylum officers who are currently tasked with adjudicating over 300,000 pending asylum cases.²² Thus, the Northern Triangle countries are not remotely equipped to fully and fairly handle even a small fraction of these cases.

The lack of asylum capacity poses a grave risk that these Northern Triangle governments will—whether inadvertently or willfully—return asylum seekers to their country of persecution, constituting the serious human rights violation of *refoulement* that is prohibited under Section 208(a)(2)(A) of the U.S. Immigration and Nationality Act.

This provision of U.S. law codifies U.S. obligations prohibiting the return of refugees to a territory where his or her life or freedom would be threatened as a state party to the 1967 Protocol Relating to the Status of Refugees. The ACAs may also violate U.S. obligations as a party to the 1984 Convention against Torture.²³ Indeed, in response to the publication of the Rule, the United Nations High Commissioner for Refugees released a statement, saying it “has serious concerns about the new U.S. policy on asylum,” calling it “an approach at variance with international law that could result in the transfer of highly vulnerable individuals to countries where they may face life-threatening dangers.”²⁴ A recently filed lawsuit details additional legal violations posed by the implementation of the ACAs.²⁵

The ACAs recently signed by DHS appear to have been drafted in haste, with multiple typographical errors introduced into the agreements.²⁶ There is little sign that they were

¹⁹ U.S. Department of State, “Country Reports on Human Rights Practices for 2018: El Salvador, Guatemala, Honduras,” 2018, <https://www.state.gov/report/custom/420abb692c/>.

²⁰ Wall Street Journal, “Asylum Seekers at U.S. Southern Border Can Now Be Sent to Guatemala Instead,” Michelle Hackman and Juan Montes, November 19, 2019, <https://www.wsj.com/articles/asylum-seekers-at-u-s-southern-border-can-now-be-sent-to-guatemala-instead-11574187109>.

²¹ Univision News, “Guatemala’s ‘embryonic’ asylum system lacks capacity to serve as safe U.S. partner, experts say,” David C. Adams, August 2, 2019, <https://www.univision.com/univision-news/immigration/guatemalas-embryonic-asylum-system-lacks-capacity-to-serve-as-safe-u-s-partner-experts-say>.

²² Government Executive, “Homeland Security Says It Will Dramatically Increase Asylum Workforce by Year’s End,” Eric Katz, October 23, 2019, <https://www.govexec.com/workforce/2019/10/homeland-security-says-it-will-dramatically-increase-asylum-workforce-years-end/160828/>.

²³ Protocol Relating to the Status of Refugees, January 31, 1967; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, December 12, 1984; “Benchbook on International Law,” Diane Marie Amann (ed.), pp. III.E-51, 2014, <https://www.asil.org/sites/default/files/benchbook/humanrights4.pdf>.

²⁴ UNHCR, “Statement on new U.S. asylum policy,” press release, November 19, 2019, <https://www.unhcr.org/en-us/news/press/2019/11/5dd426824/statement-on-new-us-asylum-policy.html>.

²⁵ U.T. v. Barr, “Complaint for Declaratory and Injunctive Relief,” United States District Court for the District of Columbia, https://www.aclu.org/sites/default/files/field_document/complaint_-_u.t._v._barr_1_15_2020.pdf.

²⁶ For example, the agreement with El Salvador refers to “El Salvadorian [sic] migration law, although this language is incorrect. A Google search for “El Salvadorian” produces zero results—the most common English-language demonym is “Salvadoran,” though “Salvadorian” and “Salvadorean” are also used.

<https://en.wikipedia.org/wiki/Salvadorans>. U.S. Department of Homeland Security, “Agreement between the Government of the United States and the Government of the Republic of El Salvador for Cooperation in the

negotiated in a meaningful way individually with each country. Furthermore, the President's actions leading up to the agreements' signing—including social media statements threatening to withhold, and subsequent withholding of, Congressionally-appropriated aid to the region—indicate that Central American officials may have accepted the terms under duress.²⁷ Additionally, one news report indicated that, in a private meeting with President Trump, Secretary Pompeo criticized the agreement with Guatemala, "called the agreement flawed and a mistake," and told the President that "the Guatemalan government did not have the ability to carry out its terms."²⁸ This raises questions about the degree to which the State Department was involved in policy deliberations and decisions underlying these agreements.

Accordingly, please provide answers to the following questions by February 18, 2020:

1. Did any officials within the State Department raise concerns about the feasibility of implementing these ACAs due to the lack of capacity of the Northern Triangle countries' asylum systems, or for any other reason? Please provide any such memoranda or communications in which any such concerns were articulated.
 - a. What specific concerns about the agreement with Guatemala were raised by Secretary Pompeo in the reported Oval Office meeting with the President? Have these concerns been addressed?
2. Were any assessments of the Northern Triangle countries' asylum adjudication procedures made prior to the negotiation or conclusion of the ACAs? Please provide any documents related to any such assessments.
3. The ACAs indicate that the parties shall develop standard operating procedures and plans regarding the implementation of these agreements. What is the status of these plans in each Northern Triangle country?
4. The ACAs indicate that they shall enter into force upon "exchange of notes" indicating that both countries have completed the necessary domestic legal procedures for bringing the agreement into force. Which of the ACAs are in force? Please include copies of any and all records related to this required exchange of notes.
 - a. Reportedly, Honduran officials wanted to delay transfers until both countries "provided notification that they have complied with the legal and institutional conditions necessary for proper implementation of this agreement" but DHS officials wrote that this request read to them as an "escape-hatch not to implement the ACA."²⁹ Should this be taken as an indication that DHS considers the ACAs to be in force even in the absence of such "notification" by both countries?

Examination of Protection Claims," signed September 20, 2019, p. 2,

<https://www.documentcloud.org/documents/6427712-US-El-Salvador-Cooperative-Agreement.html>.

²⁷ Politico, "Trump warns of retaliation against Guatemala after immigration deal falls through," Rishika Dugyala and Sabrina Rodriguez, July 23, 2019, <https://www.politico.com/story/2019/07/23/trump-guatemala-retaliation-immigration-deal-1426722>; NPR, "Trump Froze Aid To Guatemala. Now Programs Are Shutting Down," Tim McDonnell, September 17, 2019, <https://www.npr.org/sections/goatsandsoda/2019/09/17/761266169/trump-froze-aid-to-guatemala-now-programs-are-shutting-down>.

²⁸ New York Times, "Trump Officials Argued Over Asylum Deal With Guatemala. Now Both Countries Must Make It Work," Michael D. Shear and Zolan Kanno-Youngs, August 2, 2019, <https://www.nytimes.com/2019/08/02/us/politics/safe-third-guatemala.html>.

²⁹ BuzzFeed News, "Trump Wants To Start Deporting Asylum-Seekers To Honduras By January," Hamed Aleaziz, November 25, 2019, <https://www.buzzfeednews.com/article/hamedaleaziz/asylum-seekers-deportation-honduras-trump>.

5. The Rule indicates that the Attorney General and the Secretary of Homeland Security will make a categorical determination that each of the Northern Triangle countries offers a “full and fair procedure” for adjudicating asylum claims.
 - a. Which, if any countries have the Attorney General and Secretary of Homeland Security determined do have a “full and fair procedure”? Which, if any countries have the Attorney General and Secretary of Homeland Security determined do not have a “full and fair procedure”? For each country, when were any such determinations reached?
 - b. How are the Attorney General and the Secretary of Homeland Security reaching these determinations? Please provide copies of any determinations made by DOJ and DHS and any related documentation of discussions of this issue.
6. The Rule characterizes the ACAs as “safe third country” agreements as described in the Immigration and Nationality Act. Besides the ACAs, the only “safe third country” agreements signed in the 50 years since the enactment of the Immigration and Nationality Act was the agreement with Canada. Over two years elapsed between December 5, 2002, when that agreement was signed, and December 29, 2004, when it came into force.³⁰ In contrast, less than four months elapsed between July 26, 2019, when the ACA with Guatemala was signed, and November 15, 2019, when it came into force.
 - a. In the ACA signing ceremony in the Oval Office, Guatemala’s Minister of Interior and Home Affairs said that “Guatemala is definitely clear on the responsibility that it has. We are clear that we have to make changes.”³¹ What changes, if any, did Guatemala make to strengthen their asylum procedures in these four months? Please provide any communications between the government of Guatemala and the Administration related to improvements made to Guatemala’s asylum system since the agreement was signed in July.
7. In order to ensure that the United States fulfills its obligations to refrain from sending a person to a place where such person will face harm, what procedures will the Administration follow if asylum seekers face torture, ill treatment, or persecution after being transferred to the Northern Triangle?
8. Is DHS transferring asylum seekers under the ACAs to Northern Triangle countries on the same flights as deportees? How is DHS ensuring that asylum seekers are not transferred in the company of individuals who may threaten their life or freedom after their arrival in country?
9. What, if anything, was promised or offered by U.S. officials to the governments of Guatemala, El Salvador, or Honduras in exchange for their signing onto these agreements?

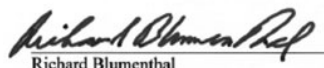
³⁰ “Agreement between the Government of Canada and the Government of the United States of America For cooperation in the examination of refugee status claims from nationals of third countries,” signed December 5, 2002, <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operational-instructions-agreements/agreements/safe-third-country-agreement/final-text.html>.

³¹ White House, “Remarks by President Trump at Signing of Safe Third Country Agreement with Guatemala,” July 26, 2019, <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-signing-safe-third-country-agreement-guatemala/>.

Sincerely,

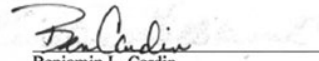

Elizabeth Warren
United States Senator

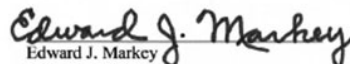

Robert Menendez
United States Senator

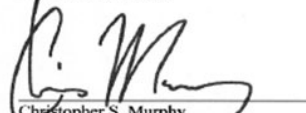

Richard Blumenthal
United States Senator



Tim Kaine
United States Senator

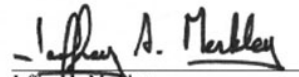

Kirsten E. Gillibrand
United States Senator

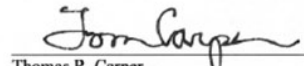

Benjamin L. Cardin
United States Senator


Edward J. Markey
United States Senator

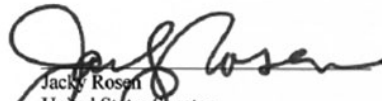

Christopher S. Murphy
United States Senator

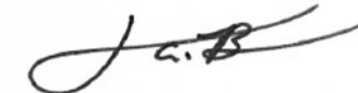

Bernard Sanders
United States Senator


Jeffrey A. Merkley
United States Senator


Thomas R. Carper
United States Senator


Kamala D. Harris
United States Senator

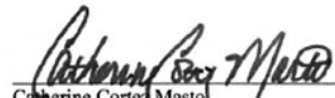

 Jacky Rosen
 United States Senator



 Cory A. Booker
 United States Senator


 Richard J. Durbin
 United States Senator


 Patty Murray
 United States Senator


 Mazie Hirono
 United States Senator


 Catherine Cortez Masto
 United States Senator


 Amy Klobuchar
 United States Senator


 Jack Reed
 United States Senator


 Christopher A. Coons
 United States Senator

DOCUMENT 2: DHS RESPONSE TO FEB. 5, 2020
WARREN-MENENDEZ LETTER

U.S. Department of Homeland Security
Washington, DC 20528



Homeland
Security

Feb. 27, 2020

The Honorable Elizabeth Warren
United States Senate
Washington, D.C. 20510

Dear Senator Warren:

Thank you for your February 5, 2020 letter to the Department of Homeland Security (DHS) regarding the Asylum Cooperative Agreements (ACAs) that the U.S. Government (USG) signed in 2019 with Guatemala, Honduras, and El Salvador. The Acting Secretary asked that I respond on his behalf.

As you know, DHS is responsible for safeguarding our nation's borders and enforcing our immigration laws. As such, DHS has been at the forefront of managing the response to the migration crisis at the U.S. Southwest Border and, working with our interagency partners, has developed a comprehensive regional approach to collaborate with governmental, non-governmental, and private sector actors to address the push-and-pull factors of irregular migration. This approach acknowledges that no one actor can resolve the issue of irregular migration by itself, and that other countries in the region can share the responsibility to manage migration by focusing on four strategic areas:

- Increasing access to humanitarian protections across the region;
- Developing programs throughout the Americas to address both the push-and- pull factors for irregular migration;
- Implementing compliance mechanisms to discourage irregular migration through the Western Hemisphere; and
- Improving security in the region, particularly at or near borders.

Along these lines, DHS is proud of our robust, growing partnerships with the Governments of El Salvador, Guatemala, and Honduras to develop policies and programs that target these strategic areas. Among these policies are the ACAs, which facilitate cooperation between the United States and our partner nation governments to expand the latter's current system for offering humanitarian protections. In doing so, these agreements provide migrants with more opportunities to seek protection in the region and eliminate the need to make the dangerous 1,000+ mile journey to the United States.

The three ACAs the USG signed with Guatemala, Honduras, and El Salvador are based on a specific legal provision: section 208(a)(2)(A) of the *Immigration and Nationality Act* (INA).

codified at 8 U.S.C. § 1158 (a)(2)(A). Under this provision, an alien may be removed from the United States “pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien’s nationality or, in the case of an alien having no nationality, the country of the alien’s last habitual residence) in which the alien’s life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection”

Upon the negotiation and implementation of U.S.-Guatemala ACA and the U.S.-Honduras ACA, the Acting Secretary of Homeland Security and the Attorney General engaged in an extensive and careful review of Guatemalan and Honduran laws, regulations, and other related documents and information to determine if their respective humanitarian protection systems satisfied the requirements under Section 208(a)(2)(A) of the INA, 8 U.S.C. 1158(a)(2)(A) – and determined that they both do. The Department of State (DOS) and international organizations that operate in each country assisted in gathering the necessary information utilized to make these determinations.

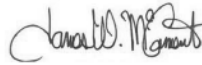
Following these determinations, the USG exchanged diplomatic notes with the Government of Guatemala to bring the U.S.-Guatemala ACA into force. The Agreement, which is being implemented in a phased manner, focus on populations whose claims Guatemala has the capacity to process. This approach relies upon a mutual understanding of the number of people and the populations whose protection claims Guatemala has the ability to process at a given time. DHS understands concerns with regard to host nation capacity and therefore engages in weekly communication and coordination with the DOS, which is key to building capacity for humanitarian protections.

We are actively working in partnership with Guatemala and Honduras to ensure that once the U.S.-Honduras ACA enters into force it will not overwhelm their respective asylum systems. In the case of Guatemala, the government periodically conveys to us their ability to accept transferees depending on their capacity to process and offer protection to certain demographics. In the case of Honduras, DHS, DOS, and the Department of Justice have engaged in months-long discussions on the populations the Government of Honduras is able to accommodate and the phased implementation of the ACA. As you can see from the Guatemala implementation, DHS plans to phase-in implementation and will do so as well in Honduras. We will continue to work with both countries to ensure that both the number of individuals and the populations transferred are based on their current capacity.

With respect to El Salvador, we are at the onset of negotiations with the Bukele Administration, which has noted concerns with implementing an ACA without the capacity to properly handle asylum claims. We intend to work through these concerns with our Salvadoran counterparts in the coming months as we negotiate the implementation of that Agreement.

Thank you for your interest in this important homeland security matter. The cosigners of your letter will receive separate, identical responses. If you have additional questions, please contact the DHS Office of Legislative Affairs at (202) 447-5890.

Sincerely,

A handwritten signature in dark ink, appearing to read "James W. McCament". The signature is fluid and cursive, with the first name "James" and last name "McCament" clearly distinguishable.

James W. McCament
Senior Official Performing the Duties of Under Secretary
Office of Strategy, Policy, and Plans

cc:

The Honorable Robert Menendez
The Honorable Richard Blumenthal
The Honorable Tim Kaine
The Honorable Kirsten E. Gillibrand
The Honorable Benjamin L. Cardin
The Honorable Edward J. Markey
The Honorable Christopher S. Murphy
The Honorable Bernard Sanders
The Honorable Jeffrey A. Merkley
The Honorable Thomas R. Carper
The Honorable Kamala D. Harris
The Honorable Jacky Rosen
The Honorable Cory A. Booker
The Honorable Richard J. Durbin
The Honorable Patty Murray
The Honorable Mazie Hirono
The Honorable Catherine Cortez Masto
The Honorable Amy Klobuchar
The Honorable Jack Reed
The Honorable Christopher Coons

DOCUMENT 3: LETTER FROM SEN. MENENDEZ TO
ASSISTANT SECRETARY OF STATE TAYLOR

JAMES S. RISCH (IDAH), CHAIRMAN
MARCO RUBIO, FLORIDA
RON JOHNSON, WISCONSIN
CORY GARDNER, COLORADO
MITT ROMNEY, UTAH
LINDSEY GRAHAM, SOUTH CAROLINA
JONI BARRASSO, IOWA
ROB PORTMAN, OHIO
RAND PAUL, KENTUCKY
TODD YOUNG, INDIANA
TED CRUZ, TEXAS
DAVID PERDUE, GEORGIA

ROBERT MENENDEZ, NEW JERSEY
SOLMAAN L. CATANI, MARYLAND
JEANNE SHAHEN, NEW HAMPSHIRE
CHRISTOPHER A. COONS, DELAWARE
TOM UDALL, NEW MEXICO
CHRISTOPHER MURPHY, CONNECTICUT
TIM KANE, VIRGINIA
EDWARD J. MARKEY, MASSACHUSETTS
JEFF MERKLEY, OREGON
CORY A. BOOKER, NEW JERSEY

United States Senate
COMMITTEE ON FOREIGN RELATIONS
WASHINGTON, DC 20510-6225

April 27, 2020

The Honorable Mary Elizabeth Taylor
Assistant Secretary of State for Legislative
Affairs
U.S. Department of State
2201 C Street, NW
Washington, DC 20520

Dear Assistant Secretary Taylor,

I write today concerning one of several long outstanding requests related to the Bureau of Western Hemisphere Affairs: that the State Department immediately provide my office with copies of all binding or nonbinding instruments, annexes, appendices, implementation plans, guidance, and other related documents that the Trump Administration has signed, agreed to, or otherwise joined with the Governments of Mexico, El Salvador, Guatemala, and Honduras since January 2017.

In the past year alone, the Trump Administration has signed the U.S.-Mexico Joint Declaration; Asylum Cooperative Agreements with the Governments of El Salvador, Guatemala, and Honduras; and agreements with the three governments of the Northern Triangle related to the United States' H2A and H2B visa programs. I also understand that the Trump Administration has signed additional memoranda and arrangements with these governments related to border security and the bilateral sharing of biometric data.

These instruments represent a major development in our bilateral relationships with the respective governments. Secretary Pompeo's April 13 announcement that the Trump Administration is reversing its misguided decision to suspend U.S. foreign assistance to El Salvador, Guatemala, and Honduras even cited "14 historic agreements and arrangements" with the three Northern Triangle governments as a key element in the decision to restart foreign assistance programs.¹ In the absence of any coherent strategy for Mexico or the Northern Triangle, they are in effect our foreign policy in the region.

In order for the Senate Foreign Relations Committee to understand the commitments and obligations the Trump Administration has agreed to on behalf of the American people, as well as the Administration's decision-making related to the expenditure of U.S. taxpayer dollars, it is essential that the State Department provide these documents to the Committee immediately.

During the Senate Foreign Relations Committee's September 25, 2019 hearing, titled, "U.S. Policy in Mexico and Central America: Ensuring Effective Policies to Address the Crisis at the Border", Acting Assistant Secretary for Western Hemisphere Affairs, Ambassador Michael

¹ <https://www.state.gov/united-states-continues-u-s-foreign-assistance-for-el-salvador-guatemala-and-honduras/>

Kozak, and I specifically discussed my request. Below is an excerpt from the informal transcript of that hearing:

SENATOR MENENDEZ: "Let me follow up then on that question. Will you commit to transmitting to the committee a copy of all the migration-related instruments, binding or nonbinding, annexes, appendices, implementation plans, guidance, and other related documents that the administration has signed, agreed to, or otherwise joined with Mexico and the Central American governments so we can finally get a clear picture of what the administration is doing here?"

AMBASSADOR KOZAK: "Yes, sir, with the caveat that often agencies, implementing agencies, have understandings. Some of them are just procedural and oral, who will be the point of contact and that kind of thing, which we would not necessarily have available to provide you. It is not that there is anything greatly secret."

While I greatly appreciated Ambassador Kozak's public commitment to supply these documents to the Committee, the State Department has refused to provide them, despite my office's repeated requests for the past seven months. The Department has not provided any substantive reason for this refusal, as there obviously is none. Recently, however, there has been some suggestion that my staff or I need to go to the Department of Homeland Security (DHS) for these documents. Let me be clear: I made this request to the State Department. To the extent that any of these documents reside with DHS, I expect the State Department to engage that agency and ensure that the production occurs.

Given that there have been numerous cases in which the State Department has failed to provide information to the Committee in a timely manner, including a still unexplained delay of three months related to questions for the record following from the September 25, 2019 hearing, I write with the hope and expectation that you will do everything in your power to ensure that the Department follows through on its responsibility, and your public commitment, as soon as possible.

Thank you for your attention to this important matter.

Sincerely,



Robert Menendez
Ranking Member

Cc:
Ambassador Michael Kozak,
Acting Assistant Secretary of State,
Western Hemisphere Affairs

DOCUMENT 4: LETTER FROM SEN. MENENDEZ
TO SECRETARY POMPEO

JAMES E. RISCH, IDAHO, CHAIRMAN
MARCO RUBIO, FLORIDA
RON JOHNSON, WISCONSIN
CORY GARDNER, COLORADO
MITT ROMNEY, UTAH
LINDSEY O'HANNA, SOUTH CAROLINA
JOHN BARRASSO, WYOMING
ROB PORTMAN, OHIO
RAND PAUL, KENTUCKY
TODD YOUNG, INDIANA
TED CRUZ, TEXAS
DAVID PERDUE, GEORGIA

ROBERT MENENDEZ, NEW JERSEY
BENJAMIN L. CARDIN, MARYLAND
JEANNE SHAWHEE, NEW HAMPSHIRE
CHRISTOPHER A. COONS, DELAWARE
TOM UDALL, NEW MEXICO
CHRISTOPHER MURPHY, CONNECTICUT
TIM WAINES, VIRGINIA
EDWARD J. MARKEY, MASSACHUSETTS
JEFF MERZLEY, OREGON
CORY A. BOOKER, NEW JERSEY

United States Senate
COMMITTEE ON FOREIGN RELATIONS
WASHINGTON, DC 20510-6225

May 27, 2020

The Honorable Michael R. Pompeo
Secretary of State
U.S. Department of State
2201 C Street, N.W.
Washington, D.C. 20520

Dear Mr. Secretary,

Following my long-standing request for copies of all agreements and arrangements, along with related documents, that the Trump Administration has signed with the Mexican and Central American governments since January 2017, I must emphasize the need to immediately provide my office with copies of the determinations by the Departments of Justice and Homeland Security that allowed the entry into force of "safe" third country agreements with Guatemala and Honduras. If the Departments of Justice and Homeland Security (DHS) make determinations that would allow the entry into force of the safe third country agreement with El Salvador, I ask that the State Department provide my office with copies of these determinations as soon as they are completed. To the extent that there needs to be any engagement with DHS or DOJ in relation to satisfying this request, I expect the State Department to actively and expeditiously engage those Agencies to achieve a timely and seamless production.

The legal authority to enter into safe third country agreements – that the Administration has renamed "asylum cooperative agreements"¹ (ACAs) – rests on the Attorney General's determination that the country to which asylum seekers are removed provides "access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection," according to Section 208(a)(2)(A) of the Immigration and Nationality Act (INA). As stated in my February 5 letter to you, Attorney General Barr, and Acting DHS Secretary Wolf, I have serious concerns that Guatemala, Honduras and El Salvador do not provide safety or adequate protection for asylum seekers, both because of the pervasive violent crime and targeted persecution there, as well as their governments' practically non-existent asylum capacity. Given that the Administration has, to date, hidden the determinations required by statute, it is impossible for Congress or the American people to know whether the agreements comply with U.S. law.

Despite the State Department's efforts to deflect questions about these agreements to DHS, it is also clear that the State Department has played an essential role in their negotiation and entry into force. For example, in response to my February 5 letter, DHS wrote: "the Acting Secretary of Homeland Security and the Attorney General engaged in an extensive and careful review of

¹ U.S. Executive Office for Immigration Review and U.S. Citizenship and Immigration Services, Federal Register Notice, "Implementing Bilateral and Multilateral Asylum Cooperative Agreements Under the Immigration and Nationality Act," effective November 19, 2019, <https://www.govinfo.gov/content/pkg/FR-2019-11-19/pdf/2019-25137.pdf>.

Guatemalan and Honduran laws, regulations, and other related documents and information to determine if their respective humanitarian protection systems satisfied the requirements under Section 208(a)(2)(A) of the INA, 8 U.S.C. 1158(a)(2)(A) – and determined that they both do. The Department of State (DOS) and international organizations that operate in each country assisted in gathering the necessary information utilized to make these determinations.”²

During the Senate Foreign Relations Committee’s September 25, 2019 hearing on “U.S. Policy in Mexico and Central America: Ensuring Effective Policies to Address the Crisis at the Border,” Acting Assistant Secretary for Western Hemisphere Affairs Michael Kozak committed to transmitting copies of all instruments, annexes, appendices, instruments for implementation, and other related documents that the administration negotiated with Mexico and the Central American governments. Consistent with that commitment, I urge you to expedite the provision of the determinations for the safe third country agreements and other documents related to agreements with Central American and Mexican governments immediately.

Sincerely,

A handwritten signature in black ink, reading "Robert Menendez". The signature is fluid and cursive, with the first name "Robert" and last name "Menendez" clearly distinguishable.

Robert Menendez
Ranking Member

² Letter from DHS Under Secretary James. W. McCament to Senator Elizabeth Warren, February 27, 2020.